



2026:DHC:7695



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

CNR No. DLHC010384562026

Date of pronouncement: 10th September 2026

+ CS(COMM) 904/2026

HINDUSTAN UNILEVER LIMITED

.....Plaintiff

Through: Mr. Amit Sibal, Sr. Advocate with Mr. Rajiv Nayar, Sr. Advocate with Mr. Saikrishna Rajagopal, Mr. Sidharth Chopra, Mr. Nitin Sharma, Ms. Sneha Jain, Mr. Vivek Ayyagari, Mr. Abhinav Bhalla, Mr. Saksham Dhingra and Ms. Smriti Nair, Advocates.

versus

KWICK LIVING (I) PRIVATE LIMITED

.....Defendant

Through: Mr. Chander M. Lall, Sr. Advocate with Ms. Shwetasree Majumder, Mr. Prithvi Singh, Ms. Jahnvi Chadha, Mr. Rohan Krishna Seth, Ms. Devyani Nath, Mr. Krtin Bhasin, Mr. Ritwik Marwaha, Ms. Vanshika Singh and Ms. Annanya Mehan, Advocates.

HON'BLE MR. JUSTICE A. J. BHAMBHANI**J U D G M E N T****A. J. BHAMBHANI, J****I.A. 22515/2026**

By way of the present application filed under Order XXXIX, Rules 1 & 2 read with Section 151 of the Code of Civil Procedure 1908 ('CPC'),

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the plaintiff seeks an interim injunction restraining the defendant from continuing the impugned advertising campaign under the name and style of “War on What’s Hidden” *inter-alia* in relation to the plaintiff’s products VIM and SURF EXCEL (‘impugned campaign’), which it is alleged, falsely portrays the plaintiff’s products as unsafe and capable of causing skin irritation or allergic reaction to users. It is the plaintiff’s contention that the impugned campaign amounts to targeted commercial disparagement, infringement of the plaintiff’s trademarks and trade dress, copyright infringement, passing off, and unfair competition.

2. At the outset it must be noted that, arising from the preliminary objection taken by the defendant as to maintainability of the present suit within the territorial jurisdiction of this court, *vidé* judgment dated 25.08.2026, this bench has referred a set of queries for consideration by a Larger Bench. The reference arose from the fact that, considering the place where the plaintiff and the defendant companies are registered, and the place where the cause of action had (also) arisen, this court entertained a doubt as to whether the plaintiff had made-out a case for founding territorial jurisdiction in this court.
3. Subsequently, however, it transpired that, in an appeal carried by the plaintiff *vidé* FAO (OS) (COMM) No.231/2026, the defendant filed an affidavit dated 01.09.2026 before the Division Bench confirming that they hold a GST registration in Delhi, with a principal place of business declared at Naraina Industrial Area, New Delhi to the tax authorities. Furthermore, learned senior counsel appearing for the defendant had, on

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instructions, also made a submission before the Division Bench that hoardings carrying the impugned campaign were put up in Delhi on 14.08.2026, and that the defendant also sells its products in Delhi, all of which was recorded by the Division Bench in its order.

4. In light of the stand taken before the Division Bench, by way of order dated 02.09.2026, the Division Bench has given a *prima facie* finding that the present suit is maintainable before this court; and has remanded the matter back to this bench for deciding the plaintiff's application under Order XXXIX, Rules 1 & 2, read with section 151 of the CPC, *while keeping the reference open for subsequent consideration*.
5. It is in this backdrop that this bench is deciding the present application.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF

6. Mr. Amit Sibal, learned senior counsel appearing on behalf of the plaintiff has submitted that, in substance, the plaintiff's case is that on 14.08.2026 the defendant has launched a deliberate, coordinated, disparaging advertising campaign specifically identifying and targeting the plaintiff's products VIM and SURF EXCEL ("said products" or "plaintiff's products") falsely denigrating the said products, in which process the defendant has also displayed the plaintiff's registered trademarks, distinctive packaging and products, and has also referenced the plaintiff's well-known advertising expressions: "Power of 100 Lemons"/ "100 Nimbuon ki Shakti" and "Daag Acche Hain". It has been submitted that the impugned campaign is being run across YouTube, Instagram and on other social-media platforms, as well as by way of physical hoardings; and

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through influencer collaborations, as also on the defendant's commercial website, which campaign remains live and in circulation as of date.

7. Furthermore, learned senior counsel has submitted that in the impugned campaign the defendant is falsely claiming that by reason of the presence of Linear Alkylbenzene Sulfonate ('LAS') and Benzisothiazolinone ('BIT') in the plaintiff's products, the use of the plaintiff's product causes, or is capable of causing, skin irritation, allergic reaction and other physical harm. The plaintiff states that the narrative in the impugned campaign then directs consumers to 'Switch to BECO', which are the defendant's competing products, which leads to an "Add to Cart" button and marketplace links inviting consumers to buy the defendant's products.
8. Learned senior counsel has submitted that the direct use of the plaintiff's trade marks, packaging and advertising expressions, coupled with adverse health-related insinuations and the contemporaneous exhortation to 'Switch to BECO', demonstrates that the impugned campaign is a premeditated, competitive attack by the defendant, which far exceeds permissible limits of promotional puffery. Mr. Sibal has characterised the impugned campaign, in the words narrated in the present application, as "prima facie targeted commercial disparagement couched in public interest".
9. It has further been contended that, though being presented with the hashtag "#WarOnWhatsHidden", the impugned campaign is not a *bona fide* exercise by the defendant in consumer transparency. It has been submitted that, had the defendant's concern been genuine, they would also have

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referred to the ingredients used by other dishwash and detergent brands in their cleaning-products in the market generally, and would not have confined the impugned campaign only to the plaintiff's products. Instead, it has been alleged that the defendant has selectively named, photographed, targeted and denigrated only the plaintiff's products, which are market-leaders, and is attempting to promote the defendant's own products.

10. Mr. Sibal has further asserted that the defendant's professed scientific basis for the impugned campaign is untenable. It has been submitted that the scientific material cited by the defendant contradicts the message in the impugned campaign; and independent testing commissioned by the plaintiff shows that the ingredient, which the defendant claims exists in Surf Excel, is present in less than half the concentration compared to what has been falsely publicised by the defendant. It is also the plaintiff's case that the mere presence of LAS or BIT in the said products does not, by itself, support the defendant's narrative that there is fear of harm to the consumer.
11. Learned senior counsel has submitted that, while the defendant may not have expressly asserted that the plaintiff's products cause skin irritation or allergies, the *overall message* and *clear implication* of the impugned campaign leads consumers to that precise conclusion.
12. In support of his submissions, learned senior counsel appearing for the plaintiff has placed reliance on the judicial precedents cited below.

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12.1. *Reckitt Benckiser (India) (P) Ltd. vs. Hindustan Unilever Ltd.*¹, in which a Division Bench of this court has made the following observations:

“21. In *Dabur India Ltd. case* [*Dabur India Ltd. v. Colortek Meghalaya (P) Ltd.*, 2010 SCC OnLine Del 391 : (2010) 167 DLT 278], this Court noted that in *Tata Press Ltd. case* [*Tata Press Ltd. v. MTNL*, (1995) 5 SCC 139] **the Supreme Court had held that “false, misleading, unfair or dispositive [sic] advertising is not protected commercial speech”**. Accordingly, this Court clarified that propositions (a), (b) and (c) stated by the Calcutta High Court in *Reckitt & Colman of India Ltd. case* [*Reckitt & Colman of India Ltd. v. M.P. Ramchandran*, 1998 SCC OnLine Cal 422 : (1999) 19 PTC 741] (as reproduced above) were no longer good law. This clarification was rendered in context of statements of fact and not statements or assertions that are apparent puffery or hyperbole. **The propositions as stated in Reckitt & Colman of India Ltd. case [Reckitt & Colman of India Ltd. v. M.P. Ramchandran, 1998 SCC OnLine Cal 422 : (1999) 19 PTC 741] are good law when considered in the context of puffery as contrasted with statements that hold out representations of facts. Such representations of facts are required to be true and not misleading.** Puffery and exaggerated opinions are merely intended to attract the attention of targeted customers; such statements are neither intended as representations or warranties, nor accepted as representation of facts. Puffery and hyperbole are not tested on the anvil of accuracy or truth. There is an element of creativeness, which finds expression in puffery and hyperbole. Freedom of such expression is a cherished facet of Article 19(1)(a) and the decision in *Tata Press Ltd. case* [*Tata Press Ltd. v. MTNL*, (1995) 5 SCC 139] or in *Dabur India Ltd. case* [*Dabur India Ltd. v. Colortek Meghalaya (P) Ltd.*, 2010 SCC OnLine Del 391 : (2010) 167 DLT 278] cannot be read as stifling such expression or creativeness.

* * * * *

“24. **In a comparative advertisement, it is open for an advertiser to embellish the qualities of its products and its**

¹ (2022) 5 HCC (Del) 672. (Division Bench)



claims but it is not open for him to claim that the goods of his competitors are bad, undesirable or inferior. As an illustration, in a comparative advertisement, it is open for an advertiser to say his goods are of a good quality but it is not open for an advertiser to send a message that the quality of the goods of his competitor is bad..... However, when it comes to statements made by an advertiser in respect of the goods of his competitors and other persons, the latitude available to an advertiser is restricted. Whilst it is open for the tailoring shop to state that it provides the best tailored suit in the city; it is not open for it to advertise that the other tailoring shops in the street lack the necessary skill and their suits are ill-tailored.

“25. A comparative advertisement would always involve the statement that the goods of the advertiser are better in some aspects than that of the competitor. But there is line that an advertiser cannot cross. He cannot disparage or defame the goods of his competitor.”

(emphasis supplied)

12.2. *Gillette India Limited vs. Reckitt Benckiser (India) Private Limited*², in which a Division Bench of the Madras High Court was of the view that:

“117. Defence of truth may be a good defence in a disparagement suit. However, whether the advertisement is truthful or not would necessarily have to be adjudicated upon trial. Disputes as to whether the acidity or the alkalinity of depilatory creams of the respondent plaintiff is beyond the safety limits cannot be decided at the interlocutory stage.”

(emphasis supplied)

12.3. *Hindustan Unilever Ltd. vs. Reckitt Benckiser (India) (P) Ltd.*³, in which a Division Bench of this court has held as follows:

“21. In Colgate Palmolive Co. v. Hindustan Unilever Ltd. [Colgate Palmolive Co. v. Hindustan Unilever Ltd., 2013 SCC

² 2018 SCC OnLine Mad 1126 (Division Bench)

³ (2023) 2 HCC (Del) 417 (Division Bench)



OnLine Del 4986], this Court had observed that in a comparative advertisement, a certain amount of disparagement is implicit. Puffery and hyperbole in the context of a comparative advertisement would, to some extent, reflect the competitor's goods in a bad light. However, as long as the advertisements are limited to puffery and hyperbole — as contrasted with the statements of fact, which are accepted as such — they are not actionable. It is now settled law that while it is open for a person to exaggerate its claims relating to his goods, it is not open for him to denigrate or disparage the goods of another person.

“22. It is also settled law that honest comparative advertisements are permissible. This implies that not only the statements of fact made in the advertisements are accurate and true but that the overall message delivered by the said statements of facts is also not misleading. Obviously, this would have to be determined from the standpoint of the customer viewing the said advertisement.”

(emphasis supplied)

13. Referring to the principles laid down in the afore-cited cases, Mr. Sibal has contended that the impugned campaign travels beyond the permissible limits of ‘comparative advertising’ since it goes way beyond making a claim that the defendant’s products are superior. Learned senior counsel has submitted that, the defendant has also ridiculed the plaintiff’s consumers in the impugned campaign - in one instance by portraying a woman who accepts skin irritation because it comes “free” with the plaintiff’s product; and in another advertisement by portraying a child who is unable to realise the harm that the plaintiff’s liquid detergent causes.



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14. Learned senior counsel has contended that, the unmistakable message of the impugned campaign is that a consumer who continues to use the plaintiff's products, is a fool. This, it is contended, is an act of calculated humiliation of the plaintiff's customer base and constitutes commercial disparagement disguised as a campaign in public interest.
15. Mr. Sibal has further contended that without scientific basis or causal substantiation in relation to the plaintiff's products *as ordinarily and intendedly used*, through the impugned campaign the defendant is disseminating falsehood, insinuating that the plaintiff's products are unsafe and harmful for use.
16. Learned senior counsel has asserted that the impugned campaign has also infringed and caused harm to the plaintiff's proprietary and common-law rights in the trade marks VIM and SURF EXCEL, their associated trade dress, taglines, artistic works, goodwill and reputation.
17. It has further been asserted on behalf of the plaintiff that, by the time the suit could be instituted, individual reels forming part of the impugned campaign had already crossed 5.6 million views, and the defendant's YouTube advertisements had collectively crossed 1 million views. The plaintiff has also referenced more than a hundred influencer posts carrying the hashtag of the impugned campaign, namely "#WarOnWhatsHidden".
18. It has been submitted that every consumer exposed to the impugned campaign may retain the adverse impression even if the impugned content is subsequently removed; however, on the other hand, the defendant will suffer no real prejudice if it is restrained from running the impugned

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campaign until the final disposal of the suit, since such restraint will not prevent the defendant from advertising or selling its products, or from making legitimate claims concerning the quality of its own products in ways which are not disparaging of the plaintiff's products.

19. In this context, Mr. Sibal has drawn attention to the following judicial precedents:

19.1. *TV Today Network Ltd. vs. News Laundry Media (P) Ltd. & Ors.*⁴, in which a Division Bench of this court has opined that:

“87. In our view, the learned Single Judge did not correctly apply the principle of balance of convenience. It is well settled that when applying the principle of balance of convenience, the Court must weigh one party's need against the other and then determine which side's convenience prevails. However, in the present case, instead of weighing the convenience, the learned Single Judge seemed to base its decision on the merits of the case.

“88. The learned Judge reasoned that the defence raised by the defendants, which relied on facts and the examination of material, would require trial. In our view, this reasoning is not appropriate when applying the balance of convenience test. The mere fact that the defendants have pleaded fair dealing or justification should not be a reason to deny interim relief, as any defendant could evade injunctive relief simply by raising such a defence. After making a prima facie finding as to the nature of the statements, the learned Single Judge should not have later concluded that the balance of convenience would favour the defendants simply because the material required substantive examination.

“89. The learned Single Judge's reasoning becomes even more complex when it comes to commercial disparagement. The primary purpose of commercial disparagement is to protect goodwill and commercial reputation from ongoing market-

⁴ 2026 SCC OnLine Del 1187 (Division Bench)



facing denigration. In our opinion, while weighing the Plaintiff's need against the defendants', the balance of convenience would certainly tilt in favour of the Plaintiff. The Plaintiff's reputation and commercial standing would be at risk, while the defendants would not face any disproportionate harm by taking down the offending content or remarks, especially at the interim stage."

(emphasis supplied)

19.2. ***Hindustan Unilever Ltd. vs. Reckitt Benckiser (India) (P) Ltd.***⁵, in which a Division Bench of this court observed that:

"52. The question whether the test report furnished by HUL substantiates its claim is a contentious one. The learned Single Judge has proceeded on the basis that determination of the said question requires the parties to lead evidence. Given the nature of the controversy, we find no infirmity with the decision of the learned Single Judge to defer the decision in this regard till the parties have led evidence.

"53. Undisputedly, the balance of convenience lies in favour of Reckitt. A false advertisement campaign would cause irreparable loss to Reckitt while postponing broadcast of an advertisement referring to Reckitt's product may not have any material effect on HUL, considering that it is free to advertise its product without reference to Reckitt's products."

(emphasis supplied)

20. Mr. Sibal has also questioned the timing of the impugned campaign and conduct of the defendant in that regard, submitting that the impugned campaign was launched on a Friday night so that it would permeate the

⁵ (2023) 2 HCC (Del) 417 (Division Bench)



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digital ecosystem over the weekend, when the plaintiff would not be able to adopt legal recourse against the defendant.

21. It has further been submitted that though the plaintiff issued to the defendant's media partners a cease and desist notice on 15.08.2026, the defendant neither paused the impugned campaign, nor did they respond substantively to the plaintiff's objections. Rather, it is claimed that the defendant issued a further post, amplified by its Co-Founder and Director, Mr. Aditya Ruia, reiterating support for the impugned campaign.
22. Learned senior counsel has further argued that the injury suffered by the plaintiff is not confined only to quantifiable loss of sales; but the harm also comprises erosion of goodwill, reputation and consumer trust built by the plaintiff around its products VIM and SURF EXCEL, since, as stated in their application, the apprehension created by the impugned campaign amongst consumers that using the plaintiff's products "on their own hands and their children's clothes for years" may cause harm, will result in lasting damage to the plaintiff's goodwill and reputation. Learned senior counsel for the plaintiff has contended that once such apprehension is implanted in the minds of their consumers, it cannot be undone merely by removing the impugned campaign.
23. Mr. Sibal has therefore submitted that damages would not constitute adequate relief; and that an immediate restraint order is necessary to prevent further injury.

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SUBMISSIONS ON BEHALF OF THE DEFENDANT

24. On the other hand, opposing the grant of any interim injunction, Mr. Chander Lall, learned senior counsel appearing on behalf of the defendant has submitted that, the entire suit as well as the present application are wholly misconceived. It has been submitted that the law on comparative advertising is well-settled; and that a trader may compare his goods with a rival's named goods, may use the rival's mark and packaging to the extent necessary to identify what is being compared; and may say what is true. It has been argued that what a trader may not do is state a falsehood, or convey, whether by innuendo, by manner, or by storyline, a false message that the rival's goods are bad.
25. Mr. Lall has also placed reliance on judicial precedents on comparative advertising jurisprudence and its permissible limits, the most relevant of which are noted below.

25.1. ***Dabur India Ltd. vs. Colortek Meghalaya (P) Ltd.***⁶, in which a **Single Bench** of this court held as follows:

“15. Recent trends have shown that the articles even in science journals commenting on the efficacy of goods manufactured by large multinational companies, are sought to be shut out through medium of courts. While an aggrieved party's right to seek recourse to law cannot be questioned, interest of the consumers to know must be guarded - even if the dissemination of information is by way of an advertisement which exaggerates the virtues of the traders goods. Public debate is good. The only caution that the defendant-trader has to bear in mind is that his advertisement does fall within the four corners of what constitutes in law malicious falsehood.

⁶ 2009 SCC OnLine Del 3940 (Single Bench)



Consequently, the courts are slow to grant interim relief if the defendant has set up an arguable case that the impugned statement is true. The courts are not ordinarily a forum which should determine as to whether the plaintiff's or the defendant's goods or services are better.

* * * * *

“20. In an action for malicious falsehood the plaintiff must necessarily plead and prove the ingredients of malicious falsehood, which are:

- (i) that the impugned statement is untrue;
 - (ii) the statement is made maliciously, that is, without just cause or excuse;
 - (iii) the plaintiffs have suffered special damage thereby.
- [See Royal Baking Powder Company (supra)]”

(emphasis supplied)

25.2. *Dabur India Ltd. vs. Colortek Meghalaya (P) Ltd.*⁷, in which a **Division Bench** of this court while deciding an appeal against the judgment of the Single Bench cited above, held as follows:

“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.

* * * * *

⁷ 2010 SCC OnLine Del 391 (Division Bench)



“18. On balance, and by way of a conclusion, we feel that notwithstanding the impact that a telecast may have, since commercial speech is protected and an advertisement is commercial speech, an advertiser must be given enough room to play around in (the grey areas) in the advertisement brought out by it. A plaintiff (such as the Appellant before us) ought not to be hyper-sensitive as brought out in Dabur India. This is because market forces, the economic climate, the nature and quality of a product would ultimately be the deciding factors for a consumer to make a choice. It is possible that aggressive or catchy advertising may cause a partial or temporary damage to the plaintiff, but ultimately the consumer would be the final adjudicator to decide what is best for him or her.

* * * * *

“21. Learned counsel for the Appellant further submitted that the use of expressions such as an apprehension of getting rashes and allergy or an allegation that other creams cause stickiness amounts to disparagement of the Appellant's product. We cannot agree with the submission of learned counsel. There is no suggestion that any other mosquito repellent cream causes rashes or allergy or is sticky. All that it is suggested is that if a mosquito repellent cream is applied on the skin (which could be any mosquito repellent cream) there may be an apprehension of rashes and allergy. Generally speaking, this may be possible depending on upon the quality of the cream, the sensitivity of the skin of the consumer and the frequency of use etc. - we cannot say one way or the other. The commercial does not suggest that any particular mosquito repellent cream or all mosquito repellent creams cause rashes and allergy. In fact, the Respondents are also trying to promote a mosquito repellent cream and it can hardly be conceived that all mosquito repellent creams (which would naturally include the Respondents' product) cause rashes or allergy. All that the Respondent's are suggesting is that since their product contains tulsi, lavender and milk protein such apprehensions are greatly reduced or that they should not reasonably exist.

* * * * *

“24. Having considered all the facts of the case, we are of the opinion that there is no merit in this appeal. There is no



occasion to interfere with the impugned order of the learned Single Judge.

“25. The appeal is dismissed.”

(emphasis supplied)

25.3. ***Tata Press Ltd. vs. Mahanagar Telephone Nigam Ltd. & Ors.***⁸, in which the Supreme Court has held as follows:

“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**

⁸ (1995) 5 SCC 139



more importance to general public than to the advertiser who may be having purely a trade consideration.”

(emphasis supplied)

25.4. *Horlicks Ltd. & Anr. vs. Heinz (India) (P) Ltd.*⁹, in which a Single Judge of this court has held as follows:

“ADVERTISEMENT IS A FACET OF COMMERCIAL SPEECH WHICH IS PROTECTED BY ARTICLE 19(1)(a) AND THE SAME CAN BE RESTRICTED ONLY IN ACCORDANCE WITH LAW ENACTED UNDER ARTICLE 19(2) of the Constitution. THE SUBMISSION THAT TATA PRESS (SUPRA) IS PER INCURIAM IS UNTENABLE IN LAW.

“28. This Court is of the opinion that advertisement is a facet of commercial speech which is protected by Article 19(1)(a) of the Constitution. The same can be restricted only in accordance with law enacted under Article 19(2) of the Constitution. In a democratic country, free flow of commercial information is indispensable and the public has a right to receive the commercial speech. In fact, the protection given to an advertisement under Article 19(1)(a) of the Constitution is a necessary concomitant of the right of the public to receive the information in the advertisement.

* * * * *

“OBJECTIVE OF SECTIONS 29(8) AND 30(1) OF THE TRADE MARKS ACT, 1999, IS TO ALLOW HONEST COMPARATIVE ADVERTISING. FAILURE TO POINT OUT A COMPETITOR'S ADVANTAGES IS NOT NECESSARILY DISHONEST

“47. The primary objective of Sections 29(8) and 30(1) of the Trade Marks Act, 1999, is to allow comparative advertising as long as the use of a competitor's mark is honest. In the present case, there is no detriment to the distinctive character of the plaintiffs' mark, as there exists a clear distinction between the plaintiffs and defendant's product. HORLICKS remains the source indicator of plaintiffs' product. In the opinion of this Court, plaintiffs cannot

⁹ 2018 SCC OnLine Del 12975 (Single Bench)



prevent use of their trade mark for the purpose of identification of their product.”

(emphasis supplied)

25.5. *Havells India Ltd. & Anr. vs. Amritanshu Khaitan & Ors.*¹⁰, in which a Single Judge of this court has held as follows:

“22. Further, advertising is a facet of commercial speech which is protected by Article 19(1)(a) of the Constitution of India (for short “Constitution”). The same can be restricted only in accordance with law enacted under Article 19(2) of the Constitution.

“23. Plaintiff’s reliance on *Tata Press* (supra) is contrary to facts as though in that case the Supreme Court had held publication of list of telephone subscribers is violative of telephonic rules, yet it had allowed publication of paid advertisement from businessmen. Consequently, observations in *Tata Press* (supra) with regard to Government’s power to regulate, prohibit commercial speech under Article 19(2) of the Constitution, which is deceptive, unfair, misleading and untruthful, are not apposite to the facts of the present case.

* * * * *

“DEFINITION OF COMPARATIVE ADVERTISING

“25. Though comparative advertising has not been defined in the ASCI Code, yet Article 2(2a) of the Advertising Directive of EEC defines comparative advertising as “any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.

“COMPARATIVE ADVERTISING IS LEGAL AND PERMISSIBLE UPON CERTAIN CONDITIONS

“26. In the opinion of this Court, Comparative advertising is legal and permissible as it is in the interest of vigorous competition and public enlightenment. In fact, Chapter IV of the ASCI Code, relied upon by the plaintiffs, itself specifically deals with Comparative Advertising. The relevant portion of the ASCI Code reads as under:

¹⁰ 2015 SCC OnLine Del 8115 (Single Bench)



“CHAPTER IV

To ensure that Advertisements observe fairness in competition such that the Consumer's need to be informed on choice in the Market-Place and the Canons of generally accepted competitive behaviour in Business are both served.

1. Advertisements containing comparisons with other manufacturers or suppliers or with other products including those where a competitor is named, are permissible in the interest of vigorous competition and public enlightenment provided:

* * * * *

“FAILURE TO POINT OUT A COMPETITOR'S ADVANTAGES IS NOT NECESSARILY DISHONEST

“33. Failure to point out a competitor's advantages is not necessarily dishonest. However, care must be taken in ensuring that statements of comparison with the competitors' products are not defamatory or libelous or confusing or misleading. In a recent decision of R (Sainsbury's Supermarkets Limited) v. The Independent Reviewer of Advertising Standards Authority Adjudications v. Advertising Standards Authority Limited, Tesco Stores Limited, CO/17656/2013, [sic] the High Court of Justice Queens Division Bench Division Administrative Court of the UK upheld the decisions of Independent Reviewer of Advertising Standards Authority Adjudications (IR) and of the Council of the Advertising Standards Authority (ASA) and held there was no flaw in the advertising campaign involving price comparison carried on by Tesco Stores

* * * * *

“IN COMPARATIVE ADVERTISING, A CERTAIN AMOUNT OF DISPARAGEMENT IS IMPLICIT

“36. A comparison, which is unfavourable to a competitor, does not necessarily mean that it is dishonest or unduly detrimental. A Division Bench of this Court in Colgate Palmolive Company v. Hindustan Unilever Ltd., 2013 SCC OnLine Del 4986 : (2014) 57 PTC 47 [Del] (DB) has held that in comparative advertising, a certain amount of disparagement is implicit and as long as the advertisement is limited only to puffing, there can be no actionable claim against the same. The relevant portion of said judgment reads as under:



“27. The law relating to disparaging advertisements is now well settled. While, it is open for a person to exaggerate the claims relating to his goods and indulge in puffery, it is not open for a person to denigrate or disparage the goods of another person. In case of comparative advertisement, a certain amount of disparagement is implicit. If a person compares its goods and claims that the same are better than that of its competitors, it is implicit that the goods of his competitor's are inferior in comparison....”

(emphasis supplied)

25.6. In *Colgate Palmolive Company & Anr. vs. Hindustan Unilever Ltd.*¹¹, a Division Bench of this court has held as follows:

“Discussion as to law on disparagement

“26. Before proceeding further to address the controversy involved in the present proceedings, it would be apposite to bear in mind the meaning and import of the expressions “disparagement” and “puffing” and similar cognate expressions. The Black's Law Dictionary, Eighth Edition, defines “Disparagement” to inter-alia mean:-

“A derogatory comparison of one thing with another; the act or an instance of castigating or detracting from the reputation of, esp. unfairly or untruthfully; a false and injurious statement that discredits or detracts from the reputation of another's property, product or business.”

Black's Law Dictionary, Eighth Edition, defines “Trade Disparagement” to inter-alia mean:

“The common-law tort of belittling someone's business, goods, or services with a remark that is false or misleading but not necessarily defamatory. To succeed at the action, a plaintiff must prove that; [sic] the defendant made the disparaging remark; the defendant intended to injure the business, knew that the statement was false, or recklessly disregarded whether it was true; and the statement resulted in special damages to the plaintiff, by passing off.”

¹¹ 2013 SCC OnLine Del 4986 (Division Bench)



Black's Law Dictionary, Eighth Edition, defines Puffing as under :-

“The expression of an exaggerated opinion - as opposed to a factual misrepresentation - with the intent to sell a good or service; Puffing involves expressing opinions, not asserting something as a fact. Although there is some leeway in puffing goods, a seller may not misrepresent them or say that they have attributes that they do not possess.”

*“27. The law relating to disparaging advertisements is now well settled. While, it is open for a person to exaggerate the claims relating to his goods and indulge in puffery, it is not open for a person to denigrate or disparage the goods of another person. In case of comparative advertisement, a certain amount of disparagement is implicit. If a person compares its goods and claims that the same are better than that of its competitors, it is implicit that the goods of his competitor's are inferior in comparison. To this limited extent, puffery in the context of comparative advertisement does involve showing the competitor's goods in a bad light. However, as long as the advertisement is limited only to puffing, there can be no actionable claim against the same. In the case of *White v. Mellin*, : (1895) A.C. 154, the House of Lords while rejecting the contention of disparagement observed as under:*

“The allegation of a tradesman that his goods are better than his neighbour's very often involves only the consideration whether they possess one or two qualities superior to the other. Of course “better” means better as regards the purpose for which they are intended, and the question of better or worse in many cases depends simply upon one or two or three issues of fact. If an action will not lie because a man says that his goods are better than his neighbour's, it seems to me impossible to say that it will lie because he says that they are better in this or that or the other respect. Just consider what a door would be opened if this were permitted. That this sort of puffing advertisement is in use is notorious; and we see rival cures advertised for particular ailments. The Court would then be bound to inquire, in an action brought, whether this ointment or this pill better cured the disease which it



was alleged to cure - whether a particular article of food was in this respect or that better than another. Indeed, the Courts of law would be turned into a machinery for advertising rival productions by obtaining a judicial determination which of the two was the better.”

* * * * *

“48. Having stated the above, it would also be necessary to examine the intent and the overall effect of the advertisement. Following the decision in Dabur India Ltd. v. Colortek Meghalaya Pvt. Ltd. (supra), it is also important to examine the storyline and the message that the impugned TVC conveys to an average person who is a consumer or a prospective consumer of the products that are advertised. An average person cannot be assumed to be gullible and is presumed to have the ability to ignore puffery. However, an average viewer is likely to accept the factual representations that are conveyed by an advertisement if the same are conveyed as serious statements of fact and not as hyperbole. An average viewer does not analyse an advertisement and is likely to be receptive to the message that the advertisement projects. A similar view has been articulated by a Single judge of this Court in Glaxo Smithkline Consumer Healthcare Limited v. Heinz India Private Limited : I.A. No. 15233/2008 in CS (OS) No. 2577/2008, Decided on 12.11.2010, wherein this court held as under : -

“An application of the principles discussed previously in this judgment, would mean that the Court has to, as far as possible, consider the overall effect of the advertisements; a minute dissection of each term, or phrase is uncalled for, and the stand point from where the Court should judge the nature of the alleged disparagement should be not of the aggrieved trader, but the reasonable, or average consumer, who is conscious of trading rival's propensities to puff and exaggerate their products. At the same time, this reasonable or average consumer is likely to be influenced by factual assertions made in such advertisements. Specific assertions, or claims, in advertisements are more likely impact directly, as contrasted with vague and general claims.”

* * * * *

“50. The entire basis of the claim being made by the respondent is that the In vivo and In vitro test conducted by independent laboratories have found that concentration of triclosan in dental plaque, after four hours of brushing, is higher where Pepsodent GSP has been used in comparison with cases



where Colgate ST is used. These findings are also disputed. However, notwithstanding the dispute, the question which arises is, does this parameter by itself lead to an inference that Pepsodent GSP is more efficient in combating tooth decay and cavities in comparison with Colgate ST. The co-relation between higher concentration of Triclosan after four hours of usage of Pepsodent GSP as claimed by the respondent and cavity prevention qualities of the two compared products is vital to determine the truthfulness of the impugned TVC. In the event, it is found that this co-relation is illusory and a higher concentration of Triclosan in dental plaque does not have a proportionate impact in combating tooth decay or germ build up or that Colgate ST has certain other ingredients in addition to Triclosan which also prevent tooth decay then clearly the message sent out by the impugned TVC would be untruthful and thus impermissible.....”

(emphasis supplied)

25.7. ***Pepsi Co., Inc. & Ors. vs. Hindustan Coca Cola Ltd. & Anr.***¹², in which a Division Bench of this court has held as follows:

“28. Usage should be in relation to the goods of the appellant and in such a manner rendering the use of mark likely to be taken as being used as a trade mark by the respondent. That is not even the case of the appellant. It is nowhere alleged by the appellant that respondents have used the globe device of the appellants for its products nor passed on its products under the Trade Mark or globe device of the appellant. We find force in the submission of Mr. Iqbal Chhagla that the impugned advertisement neither uses the trade mark of the appellants in the course of trade nor in any manner suggest the connection of appellants trade mark with respondent's goods. Moreover comparative advertising is permissible as held by this Court in Reckitt & Coleman v. Kiwi TTK Ltd. (Supra) subject to the rider that it does not denigrate the product of the appellant. Therefore, the contention of the appellant that the use of its trade mark for comparative advertising is ipso facto infringement of the appellants trade mark prima facie has no substance. In support reliance can be placed on the following

¹² 2003 SCC OnLine Del 802 (Division Bench)



decisions; (i) *Kaviraj Pandit Durga Dutt Sharma v. Navratan Pharmaceutical Laboratories*, AIR 1965 SC 980 : PTC (Suppl) (2) 680 (SC); (ii) *Ruston and Hornby Ltd. v. Zamindara Engineering Co.*, (1969) 2 SCC 727 : AIR 1970 SC 1649 : PTC (Suppl) (1) 175 (SC); (iii) *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, (2001) 5 SCC 73 : 2001 PTC (21) 300 (SC) SLP (C) 159-4/98 decided on 8th November, 2000. **If a trader compares his goods with the goods of a rival without in any way advertising that the trade mark is used in relation to his goods, there is prima facie no infringement.** Even otherwise this is only a prima facie view and if ultimately after trial court comes to any other view then the appellants can be compensated as rightly observed by the learned Single Judge. Similarly **use of the phrase in the commercial advertisement “Yeh Dil Maange No More” can at best be mocking or parodying in the context it is used but does not amount to infringement of trademark of the appellant.** Respondent did not use the slogan of the appellant for its products. Hence on this court [sic, count] also we find no ground to interfere with the order of the learned Single Judge.”

(emphasis supplied)

26. Mr. Lall submits that the question before this court is therefore a narrow one i.e., *what did the defendant actually say, and is it true?* To answer the question posed, it has been Mr. Lall’s submission that the impugned campaign says:

- 26.1. That “Surf Excel Matic Liquid (Top Load)” and “Vim Dishwash Gel (Lemon)” do their stated job of cleaning clothes and washing dishes very well, and the defendant has never claimed otherwise;
- 26.2. That Surf Excel contains BIT in the proportion of 277 mg/kg and LAS upwards of 10%, both of which *can cause* skin irritation;
- 26.3. That Vim contains LAS upwards of 8%, which *can cause* skin irritation;



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26.4. Whereas BECO Natural Laundry Liquid (Top Load) and BECO Natural Dishwash Liquid *do not contain LAS or BIT*.

27. Independently of what the impugned campaign says, and by way of a further and complete defence, Mr. Lall has submitted that the tort of commercial disparagement is, in its essential character, no more than the tort of defamation transposed from a person onto that person's goods; and that the defences available to a person in an action for defamation, of which 'truth' is the foremost, are equally available in an action for disparagement. Learned senior counsel has submitted that in this case therefore, insofar as the defendant is shown to be stating the truth, the impugned campaign cannot be injuncted, merely because it is unpalatable to the plaintiff.
28. To support the submission that a *prima facie* truthful statement cannot be injuncted, Mr. Lall has placed reliance on the decision of the Court of Appeal in ***Bonnard vs. Perryman***¹³, referencing the following paras of the decision:

*“The jurisdiction to grant an injunction to restrain a libel is one that will be exercised with extreme caution. **It will not be exercised where the libel is true, and the Court will not in the present state of the evidence decide the question whether the libel is true or not; and will not grant an injunction till that question has been decided by a jury**: Liverpool Household Stores Association v. Smith (1). The Court will take into consideration the fact that the article complained of is not one written for a particular private end, but is published in a newspaper for a general, and to some extent public, purpose.*

* * * * *

¹³ (1891) 2 Ch. 269 (1968) 3 WLR 1172.



*“The principles of the Court are expressed in several cases, but I think it sufficient to refer to one of them. That is the case of the Quartz Hill Consolidated Gold Mining Company v. Beall (1) before the Court of Appeal. In that case there had been a circular distributed amongst the shareholders in a company reflecting on the conduct of persons interested in it, and Sir George Jessel in giving judgment says this(2): “The result, therefore, is that there is jurisdiction in a proper case upon interlocutory application to restrain the further publication of a libel. What I have said is confirmed by *Beddow v. Beddow* (3), *Shaw v. Earl of Jersey* (4), and *Day v. Brownrigg* (5). But the question as to whether the jurisdiction though existing has been properly exercised is quite different. It is a jurisdiction which must be very carefully exercised. No doubt there are cases in which it would be quite proper to exercise it, as, for instance, the case of an atrocious libel wholly unjustified and inflicting the most serious injury on the Plaintiff. But, on the other hand, where there is a case to try, and no immediate injury to be expected from the further publication of the libel, it would be very dangerous to restrain it by interlocutory injunction.” I entirely accept that as binding upon me, and intend to be governed by it.”*

(emphasis supplied)

29. Learned senior counsel has further submitted that every representation made in the impugned campaign is (a) ingredient-specific; (b) tied to a named product-variant actually tested; and (c) framed strictly as a *capability of the named chemical in the concentration found by using the qualifier “can cause” and not “does cause”*; and that every figure relied-upon by the defendant is the result of testing by NABL-accredited laboratories, on sealed retail packs of the very variants named on-screen, coded by the laboratories and determined by HPLC-DAD and LC-MS methodology, as recorded in the test reports filed alongwith the defendant’s reply to the interim application.



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30. Insofar as the defendant's intent is concerned, Mr. Lall has submitted that *the defendant has never claimed, and does not claim, that the plaintiff's finished products are unsafe, harmful or toxic*, nor that they violate any law or regulatory standard; and that the defendant has, at every fork where a choice was available to it, chosen the reading most favourable to the plaintiff by publishing "upwards of 8%" and "upwards of 10%" instead of "up to 15%" or "up to 18%", in the comparative advertisement panels for VIM and SURF EXCEL respectively, which alternatively would have caused significantly more alarm within the consumer-base. It has been submitted that the defendant has therefore been sparing of the plaintiff since the defendant's own research material would permit it to portray the results of the tests conducted on the plaintiff's products in more alarming way.
31. Deriving support from the regulatory material filed by the plaintiff itself, learned senior counsel for the defendant has submitted that the usage of the words "can cause" to hint towards the capabilities of both LAS and BIT to cause skin irritation is not the defendant's own assertion but a capability recorded by regulators and scientific bodies, including *inter-alia* the European Union's harmonised classification of BIT, the ECHA classification of LAS, and the AICIS/NICNAS assessments.
32. Mr. Lall has also placed reliance upon a judgment passed by a Division Bench of the Bombay High Court in ***Hindustan Unilever Ltd. & Anr. vs.***

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*USV (P) Ltd.*¹⁴, to support the submission that assertions made on scientific basis should not be restrained. Learned senior counsel has drawn attention to the following paras of the judgment:

“9 As the learned Judge has noted in his order, advertising of a commercial product is nonetheless dissemination of information regarding the product advertised. The purchasing public is expected to be benefitted by such information made available to them. Prima facie, at this ad-interim stage, it is fairly clear to our mind that pH factor of a toilet or bathing soap is an important and relevant aspect and it is quite legitimate to make it a talking point for recommending one's product to the purchasing public.....

* * * * *

“11 That leaves the only question as to whether the Respondent can be permitted to say that the Appellants' products, are 'not ideal'. As we have noted above, the comparison in terms of safety, calling the respective products 'safe' and 'not safe', has been denied by the learned Single Judge, ordering these words to be deleted from the advertisements so as to take care of the Appellants' original grievance. The manner in which the impugned advertisements (now proposed) are presented, makes it clear that the two products are being compared in terms of their respective pH values and based on such comparison, the Appellants' products are being described as 'not ideal for sensitive skin'. As we have noted, there is some scientific basis for saying so. But, even if the Respondent were to stop at merely comparing the two products by names and with reference to their respective pH values, and then calling its product as 'ideal for skin care', it is not much different from implying that the rival products, afterall, are not so ideal. There is, therefore, at least from the stand point of today's ad-interim application, no justification for requiring the Respondent to delete the reference to 'not ideal' with reference to the Appellants' products. In any event, as we have seen above, the real denigration, which came with the use of the words 'not safe', which did not have any substantial scientific basis prima facie, considering that the issue of safety is covered by several elements and not necessarily

¹⁴ Judgment dated 21.01.2021 in Comm. Appeal (L) No. 1919/2021 (Bom) (Division Bench)



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connected merely to the aspect of pH value, has been well taken care of in the impugned order.”

(emphasis supplied)

33. In addition to the above, learned senior counsel appearing for the defendant has submitted that the plaintiff's own products, under the very same brands *viz.*, Surf Excel and Persil, carry LAS/BIT disclosures on packs sold in the United States and the United Kingdom, where such disclosures are mandated by regulation, whereas no similar disclosure is made on the plaintiff's products in India, since there is no equivalent regulatory requirement in our country. It has been submitted that it is precisely this regulatory vacuum that the impugned campaign seeks to address, by furnishing to the Indian consumer information regarding the very same ingredients, that the plaintiff is, by regulation, obliged to disclose in the more heavily-regulated jurisdictions.
34. Mr. Lall has submitted that, in these circumstances, the impugned campaign cannot be characterised as false or malicious, since it does no more than supply the Indian consumer information which they are deprived of, owing *inter-alia*, to differing regulatory standards. To support this argument, learned senior counsel has referred to a decision by a Single Judge of the Bombay High Court in ***Hindustan Unilever Ltd. vs. Gujarat Coop. Milk Marketing Federation Ltd.***¹⁵, where the court has observed that :

¹⁵ 2017 SCC OnLine Bom 2572 (Single Bench)



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“49. Any campaign to educate the members of the public by placing before them the true and correct facts/ingredients used in a product should always be welcomed.”

35. While taking the court through the storyboards of the advertisements in the impugned campaign, Mr. Lall has submitted that the advertisements, *read as a whole and not by a hyper-technical dissection of individual frames*, in fact concede the cleaning efficacy of the plaintiff's products, for example, *“Kapde toh acche saaf karta hai, par tere detergent waali baat nahi hai”* and that an advertisement which opens by praising the results obtained by the rival's product cannot simultaneously be read as holding the rival's consumer up to ridicule.
36. Furthermore, learned senior counsel has submitted that the plaintiff does not plead that any representation in the impugned campaign is false; rather, the plaintiff's case is that its own customers are being held-up as “figures of ridicule” and are left with the “unmistakable message” that, in the plaintiff's own words, “only a fool continues to use the plaintiff's products”. Mr. Lall has submitted that the tort of commercial disparagement protects a trader against *untrue statements* concerning its goods, but does not extend to a grievance about how a rival's consumers are made to feel; and that, in any event, the plaintiff has not placed on record even a single complaint of a consumer claiming to have felt ridiculed; nor any survey, study, or other material supporting its assertion that this message was conveyed to “every viewer”; and that this averment



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is therefore not only irrelevant but also rests on nothing more than the plaintiff's own reading of the storyline.

37. On the three ingredients necessary for grant of an interim injunction, Mr. Lall has submitted that the plaintiff has failed to establish even a *prima-facie* case; that the balance of convenience lies squarely in favour of the defendant, inasmuch as the impugned campaign has been disseminated in public to a substantial extent, since the individual reels have crossed 5.6 million views and the YouTube advertisements having collectively crossed 1 million views as of the date of institution of the suit, which numbers have only rapidly increased ever since. It has been submitted that, given the extent of dissemination, restraining a lawful, ongoing campaign at this stage would cause serious and disproportionate prejudice to the defendant, apart from the fact that granting an interim injunction at this stage would only serve as an academic precedent to stifle commercial free speech, when such speech has already triggered the conversation that the defendant intended to start. Furthermore, it has been contended that no case of irreparable injury has been made-out, since the plaintiff's grievance, even taken at its highest, relates only to alleged reputational harm which is capable of being computed and compensated in damages, and is not an injury of an irreversible character.
38. Without prejudice to the foregoing, and in the alternative, Mr. Lall has submitted that if this court finds any particular representation within the impugned campaign objectionable, the appropriate course would be to restrain only such offending representation, and not the campaign in its

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entirety. It has been argued that the plaintiff has not even alleged anything objectionable in relation to the greater portion of the campaign; and that therefore to injunct the whole of the campaign would amount to a disproportionate restraint upon the defendant's right to commercial free speech which is guaranteed under Article 19(1)(a) of the Constitution.

39. To support the contention that offending parts of a campaign can be sieved out instead of injuncting an advertisement campaign as a whole, Mr. Lall has relied upon a judgment rendered by a Division Bench of this court in ***Puro Wellness (P) Ltd. vs. Tata Chemicals Ltd.***¹⁶, in particular referring to the following paras:

“31. At the outset it requires to be clarified that of the ‘impugned material’ considered by the learned Single Judge, one has been expressly disowned by the Appellant viz., the video circulated on Whatsapp. This was noted even by the learned Single Judge. However, for some reason, and to this Court it appears to be a conclusion not based on evidence, the learned Single Judge concluded that the video was circulated at the behest of the Appellant. Indeed, there was no material at the stage at which the impugned order was passed to come to such a conclusion. Even ASCI held that the video could not be attributed to the Appellant. In any event, Mr. Chandra clearly stated that the Appellant is not aggrieved by the video being injuncted from being circulated and is concerned only with it being wrongly attributed to the Appellant.

* * * * *

*“34. While the learned Single Judge has proceeded on the basis that the impugned material should be considered as constituting a ‘campaign’ and it should therefore be considered as a whole, **it was necessary for the Single Judge to have considered the merits of each of the distinct elements constituting the ‘impugned material’**. Further in the impugned judgment, one type of material is conflated with the other. For*

¹⁶ 2019 SCC OnLine Del 10766 (Division Bench)



instance, there is extensive reference in the impugned judgment at various places to the video and its contents despite it being disowned by the Appellant.

* * * * *

*“61. Learned counsel for the Respondents placed considerable reliance on the observations of the learned Single Judge in para 63 of the impugned judgment. In the absence of the matter having gone to the stage of evidence, the conclusion of the learned Single Judge in para 63 that ‘the TATA brand has earned iconic status. TATA salt was introduced by the Plaintiff and was recognised by the Government as one of the products meant to eliminate iodine deficiency’, is problematic. Equally problematic is the opinion that “The swathe of population which has consumed and continues to consume a product such as TATA salt cannot be led to believe that they were consuming poison or a dangerous ingredient, without there being irrebuttable proof for the same.” This ought to be qualified by the caveat that this is the Plaintiff’s case which remains to be tested in evidence. **The threshold for proving defamation is high. In the present case, it might be higher with the Appellant pleading truth as a defence.**”*

(emphasis supplied)

40. Based on the above submissions, learned senior counsel for the defendant has argued that the plaintiff has failed to satisfy any of the three essential ingredients for the grant of an interim injunction, and that the present application therefore deserves to be dismissed with costs.

REJOINDER SUBMISSIONS ON BEHALF OF THE PLAINTIFF

41. Rejoining to the arguments advanced on behalf of the defendant, Mr. Sibal has submitted that the impugned campaign does not confine itself to disclosing the presence of some ingredients in the plaintiff’s products, but expressly attacks the finished products; and thereafter directs the viewer to “SWITCH TO BECO”. It has been submitted that the sequence is



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composed in a manner that refers to the finished products of the plaintiff, and not the ingredients alone.

42. Mr. Sibal has submitted that the defendant has singled-out the plaintiff's products, even though it is undisputed, and indeed recorded in the defendant's own laboratory report, that LAS is present in "typical commercial quantities" in similar products across the industry. This, it has been submitted, shows the *mala fides* on the part of the defendant. Learned senior counsel for the plaintiff has also disputed the correctness of the said report and challenged the inferences sought to be drawn by the defendant from the lab reports relied upon by them.
43. Turning to the legal position, learned senior counsel has placed reliance on *Colortek (Division Bench)*, to submit that what is to be seen is the intent of the advertisement, the manner of the advertising, and its overall effect; and that the defendant's insistence on the literal accuracy of each assertion in the impugned campaign *taken in isolation* is accordingly misconceived.
44. In answer to the defendant's submission that a trader may compare his goods with a rival's named goods and may say what is true, Mr. Sibal has placed reliance on the decision of a Division Bench *Reckitt Benckiser (2022)*, submitting that though it is permissible for an advertiser to embellish the qualities of his own product, it is not open to him to hold out that a competitor's goods are bad, undesirable or inferior; and that in ***Dabur India Ltd. vs. Patanjali Ayurved Ltd.***¹⁷ it has been held that though

¹⁷ Order dated 03.07.2025 in CS(COMM) 1195/2024 (Single Bench)



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superiority may be claimed in one's product, such superiority may not be derived based on a fault in the rival's product, and that what ultimately matters is the impression which the advertisement registers in the mind of the viewer.

45. Learned senior counsel has submitted that a direct answer to the defendant's truth-based defence is furnished by the verdict of the Division Bench in *Reckitt Benckiser (2023)*, which has held that while a statement regarding comparative features of a product may be true, the overall commercial advertisement may nonetheless be grossly misleading; and that this is precisely the plaintiff's case, namely that even if the defendant's ingredient-level figures are assumed to be true and accurate, the product-level message that the impugned campaign builds upon them is that the plaintiff's products cause skin irritation, which is grossly misleading.
46. Responding specifically to the defendant's submission that commercial disparagement is no more than the law of defamation transposed onto a person's goods, and that the defences available in defamation are, for that reason, equally available in cases of disparagement, Mr. Sibal has submitted that the two torts stand upon altogether different footing; and that the defence of truth does not get transposed between them in the manner the defendant has suggested. Learned senior counsel has submitted that in an action for defamation, a court *declines* to grant interim injunction where the defendant pleads and shows a real intention to justify the impugned statement at trial, following the principle laid down in



Bonnard; however, as far as matters of disparagement are concerned, learned senior counsel has reiterated that the balance of convenience shifts in favour of the plaintiff as held by a Division Bench of this in *TV Today Network Ltd.*

47. Furthermore, learned senior counsel has submitted that in matters concerning commercial disparagement this court has repeatedly proceeded to examine, and where warranted to restrain, an impugned advertisement notwithstanding that its maker asserted its truth, as in *Colortek*, in *Reckitt Benckiser*, and in *Patanjali Ayurved Ltd.* Relying on these precedents, Mr. Sibal has submitted that in cases of disparagement the moment the defendant *crosses the line* and engages in *denigration* of the plaintiff's goods and/or services in any form, the *balance of convenience* tilts in the favour of the plaintiff; and towards the grant of an interim injunction. Learned senior counsel has therefore submitted that the defence of truth is accordingly placed on a markedly higher footing in defamation, where its mere invocation may, without more, defeat interim relief; but in cases of disparagement, where the truth of an isolated fact remains at most one factor going to the overall impression conveyed, it does not operate as a bar to the grant of interim relief.

DISCUSSION & CONCLUSIONS

48. The plaintiff has based their claim in the suit on the allegation that the impugned campaign amounts to disparagement of the plaintiff's products. First and foremost therefore, it is necessary to examine what constitutes disparagement in law, since, it appears that the expression is sometimes



used loosely to describe any statement which places a competitor's goods in an unfavourable light. This however, does not appear to be the accurate articulation of 'disparagement' as understood in law.

49. As noticed above, Black's Law Dictionary, Eighth Edition, defines "disparagement" to *inter-alia* mean:-

"A derogatory comparison of one thing with another; the act or an instance of castigating or detracting from the reputation of, esp. unfairly or untruthfully; a false and injurious statement that discredits or detracts from the reputation of another's property, product or business."

(emphasis supplied)

50. It is significant that the definition of disparagement, as extracted above, sets-out different shades of meaning of the expression "disparagement", beginning with a mere "derogatory comparison" and proceeding, in its narrower sense, to "a false and injurious statement" which discredits or detracts from the reputation of another's property, product or business. The latter formulation is of particular significance, which makes *falsity and injury* conjunctive elements of the legal wrong of disparagement. A mere derogatory comparison, without more, cannot therefore be equated with disparagement that is actionable in law. Indeed, As has been held in several verdicts cited above, *some degree of adverse comparison* is inherent in *any comparative advertisement*, since the assertion that one product is superior necessarily carries with it the implication that the competing product is inferior in the relevant aspect.



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51. The mere circumstance that a statement places a competitor's product in *unfavourable light* cannot, therefore, in and of itself, constitute an actionable wrong. What is material is whether the impugned representation is *false* or *misleading* or *deceptive* and, where the tort of malicious falsehood is invoked, whether the other constituent requirements of that tort are also satisfied.
52. This brings the court to a threshold question: whether disparagement, without anything more, is actionable in law.
53. Upon considering the judicial precedents relied upon by both sides, the answer must be in the *negative*, for the reasons discussed hereinafter.
54. In *Colgate Palmolive*, a Division Bench of this court has observed that, in the case of comparative advertising, "a certain amount of disparagement is implicit". A person who asserts the superiority of his goods necessarily conveys, at least by implication, that the goods of his competitor are inferior in the relevant aspect. Highlighting the comparative disadvantage of the competitor's product or service is inherent in the very nature of comparative advertising, and cannot, by itself, furnish a cause of action founded on disparagement.
55. The distinction, therefore, is between *legitimate comparison or puffery* on the one hand, and *false and/or misleading and/or deceptive* representation of fact on the other. It is in the latter case that the law ought to intervene. Beginning with *White vs. Mellin*¹⁸, judicial precedents do not support the

¹⁸ [1895 A.C. 154 (H.L.)]



proposition that *every* unflattering comparison of a competitor's goods is, merely for that reason, actionable.

56. The legal position, therefore, cannot be that a truthful albeit unfavourable comparison, becomes actionable merely because the competitor regards it as disparaging. To hold otherwise would be to disregard the distinction, consistently maintained in the precedents, between permissible comparative advertising and actionable falsehood.
57. It is also necessary to guard against a definitional circularity which may obscure the legal analysis of the concept of disparagement. The mere conventional use of the word 'disparagement' should not be taken to imply that falsity or injury are inherent in the action. In the opinion of this court, comparative advertising amounts to disparagement as understood in law *only* if the act complained of contains the ingredients of falsehood and/or misrepresentation and/or deception, *and* such act leads to injury to the competitors' intellectual property or reputation in relation to the latter's goods or services.
58. To put it differently, just because a comparative advertisement is derisive or denigrating or unflattering of the competitor's product or service does not necessarily imply that it amounts to *disparagement in law*.
59. Unless the foregoing narrow and contoured definition is accepted as the true legal meaning of disparagement, the concept of disparagement would fall foul of the right to commercial free speech guaranteed under Article 19(1)(a) of the Constitution, which is supported by an unbroken line of precedents beginning with the Supreme Court's verdict in *Tata Press*.



60. It is not disputed by either side that truth is a possible defence to an allegation of commercial disparagement.
61. Insofar as the grant of interim relief is concerned however, the approach of the court, as reflected in *Colortek*, is that the court would be slow to grant interim relief where the defendant has raised an arguable case that the impugned statement was true. In this regard learned senior counsel for the defendant has relied upon *Bonnard*, in which it was held that an interlocutory injunction will not ordinarily be granted to restrain a publication where the defendant pleads the defence of justification by truth. However, this court is of the view that the *Bonnard* principle concerns a claim of defamation and is not *squarely* applicable to a case of commercial disparagement.
62. Similarly, it has been argued that the Division Bench in *Puro Wellness* has emphasised that the threshold for establishing disparagement or defamation is a high one, and that the question assumes still greater significance where truth is pleaded by the defendant. It has been submitted that in such case, the plaintiff must do more than merely allege that the statement is false; the plaintiff must meet the defendant's case of justification.
63. In the opinion of this court, there is an important distinction between truth as a defence to an allegation of defamation *and* truth as a defence to a claim for disparagement. In a case of defamation, to obtain an order of injunction before trial, the *plaintiff must show the prima facie falsity* of the plea of justification by truth taken by the defendant, since the balance of



convenience lies in favour of the defendant. Failing that, a pre-trial injunction is *not* ordinarily granted, leaving it to the defendant to prove the defence of truth at the trial. On the other hand, in case of disparagement to resist a pre-trial injunction the *defendant must show the prima facie credibility* of its plea of justification by truth; and only if the court is *prima facie* satisfied that there is a tenable basis to the defence of truth will a court *not* injunct a defendant; and accordingly the balance of convenience lies in favour of the plaintiff.

64. This distinction between commercial disparagement and defamation hinges on the fact that, if a defendant fails to show a tenable basis to its claim of truth as a defence, the defendant can be left to employ other means of comparative advertising instead of denigrating the plaintiff's goods or services, while in a case of defamation that option *may not* exist in the hands of a defendant who comments on a given subject and cannot be asked, instead, to comment on a different subject.
65. There is also another important qualification to the 'truth' defence in relation to commercial disparagement. The aspect of 'truth' cannot be determined by isolating a particular element of an advertisement. That is to say that, a word, phrase, statement, picture, illustration, or artwork cannot be segregated from an advertisement and assessed in isolation, divorced from the whole. The court must consider the *overall message* conveyed by the advertisement, and the *impact that such message* would have on the average consumer.



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66. Thus, a particular element of an advertisement may, when viewed in isolation, be accurate or truthful, but when juxtaposed with its other elements, the advertisement viewed as a whole may convey a false and/or misleading and/or deceptive message to an average consumer. This is the principle that emerges from *Colgate Palmolive*, where the Division Bench took into account the storyline and overall effect of the advertisement, rather than to individual frames or statements viewed in isolation. A similar concern is reflected in the Bombay High Court's decision in *HUL vs. USV*, where the difficulty arose not from the underlying data itself, but from the inference sought to be drawn from that data.
67. Accordingly, where truth is pleaded as a defence against a claim of commercial disparagement, the enquiry cannot end with verification of the discrete elements of the advertisement as canvassed by a defendant; and additionally the court must also examine whether the inference or conclusion that the advertisement invites the average consumer to draw is false and/or misleading and/or deceptive when tested against the underlying material.
68. In the present case, the impugned campaign, which has several variants, has been run broadly in two formats: one, as physical advertisements, in print or on hoardings; and two, on digital platforms, including social media handles, YouTube channels, defendant's web-site and other similar digital media.
69. The relevant images of the impugned campaign as produced before this court are the following:



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Shipping Available | Easier way to connect with us via WhatsApp | Buy 2, Get 1 FREE Sale is LIVE! | Shop Now!

Home Shop All About Us Blog

Enterprise & B2B War On What's Hidden

INDIA'S #1 CHOICE FOR NATURAL CLEANERS

Surf excel MATIC

STUDIES SHOW THAT BENZISOTHAZOLINONE (BIT), LINEAR ALKYL BENZENE SULFONATE (LAS) **CAN CAUSE SKIN IRRITATION & ALLERGIC REACTIONS.**

SURF EXCEL MATIC LIQUID (TOP LOAD) CONTAINS 277mg/kg BIT & LAS UPWARDS OF 10%

Based on tests conducted by an independent third party laboratory.

SWITCH TO BECO

INDIA'S #1 CHOICE FOR NATURAL CLEANERS
Does not contain BIT and LAS

VIEW THE DETAILED REPORT HERE.

Natural Ingredients • Eco-Friendly • Plant-Based Formulation • Pet safe • Baby safe • Hypoallergenic

BECO

beco.india

You may trust the front of the bottle and never flip it over
So we did the flipping for you!

Full reports - link in bio.
#WarOnWhatsHidden

No comments yet.
Start the conversation.

56 8 hours ago

Add a comment...

This isn't about fear it's about creating awareness

SWIPE FOR THE TEST RESULTS

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Not Detected

BECO NATURAL DISHWASH LIQUID

Not Detected

BECO NATURAL LAUNDRY LIQUID - TOP LOAD

Upwards of 8%

VIM DISHWASH GEL (LEMON)

Upwards of 10%

SURF EXCEL MATIC LIQUID - TOP LOAD

LINEAR ALKYL BENZENE SULFONATE (LAS)

Linear Alkylbenzene Sulfonate (LAS) is known to trigger skin allergy as well as skin and eye irritation.

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You may trust the front of the bottle and never flip it over
So we did the flipping for you!

Full reports - link in bio.

#WarOnWhatsHidden

No comments yet.

Start the conversation.

56

8 hours ago

Add a comment...

< LOQ

BECO NATURAL LAUNDRY LIQUID - TOP LOAD

< LOQ

BECO NATURAL LAUNDRY LIQUID - FRONT LOAD

277 mg/kg

SURF EXCEL MATIC LIQUID - TOP LOAD

237.99 mg/kg

SURF EXCEL MATIC LIQUID - FRONT LOAD

ISOTHIAZOLINONES (BIT/MI/MCI)

BENZISOTHIAZOLINONE (BIT), can cause skin allergy

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So we did the flipping for you!

Full reports - link in bio.

#WarOnWhatsHidden

No comments yet.

Start the conversation.

56

8 hours ago

Add a comment...

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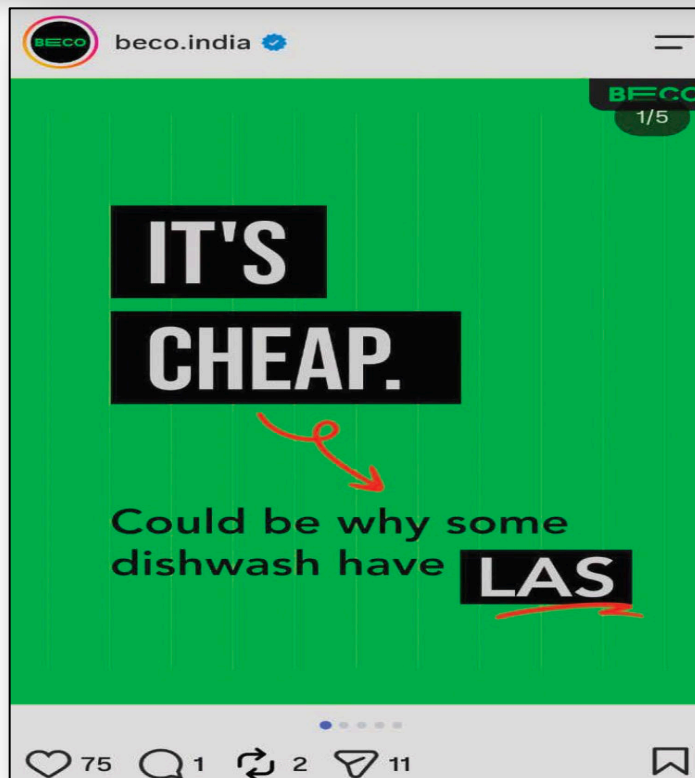
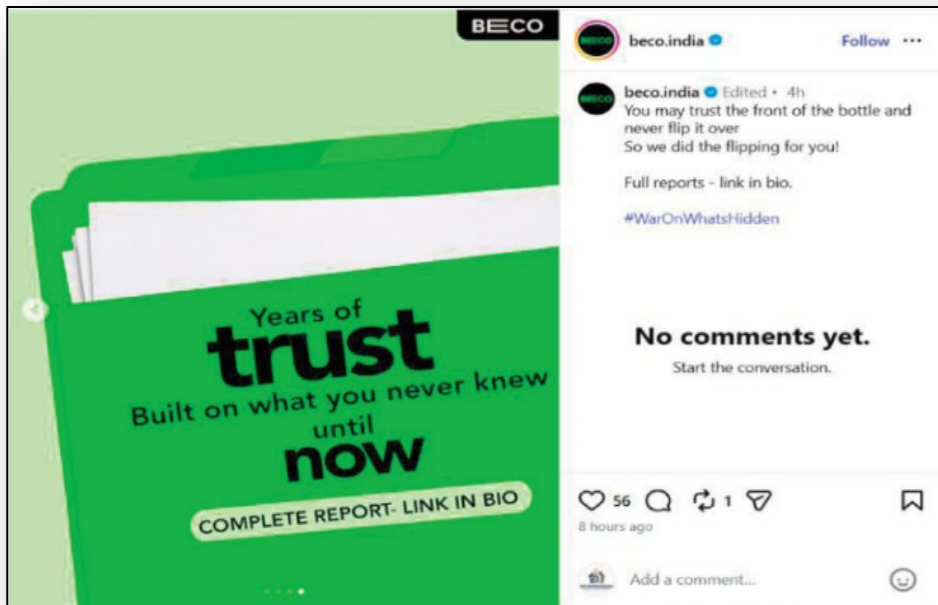
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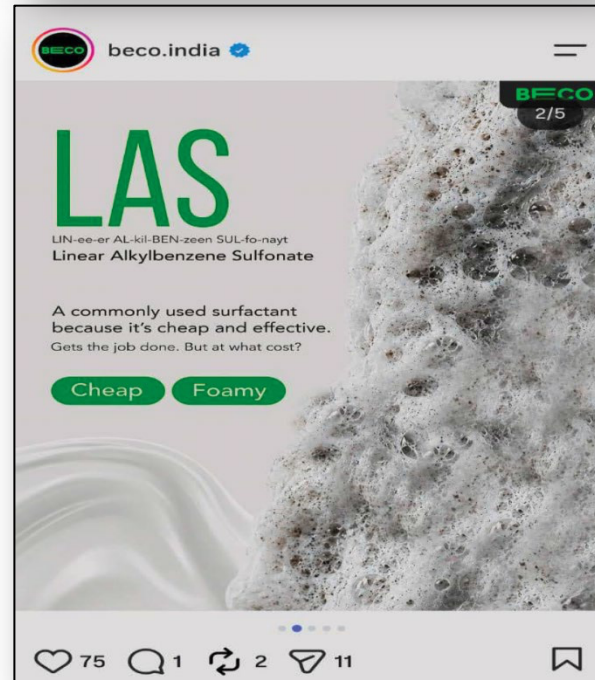
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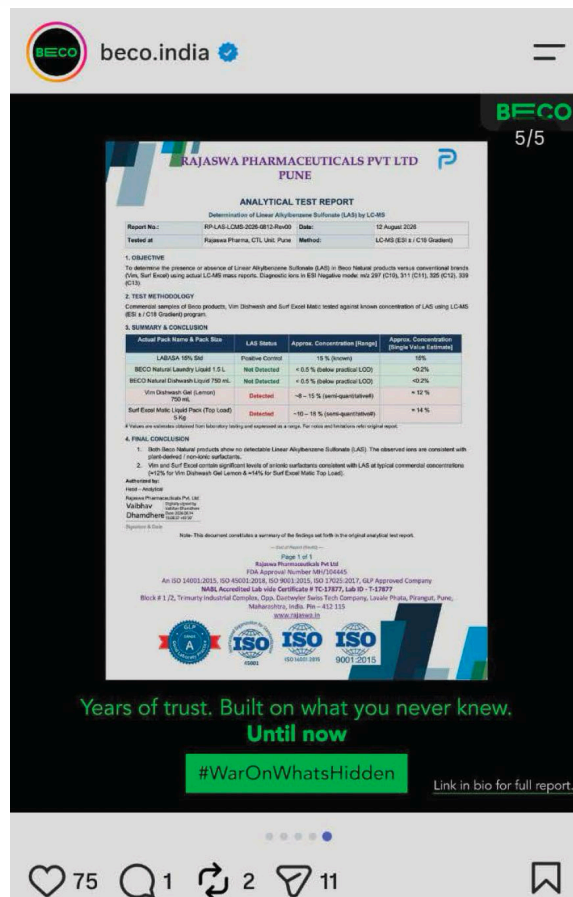
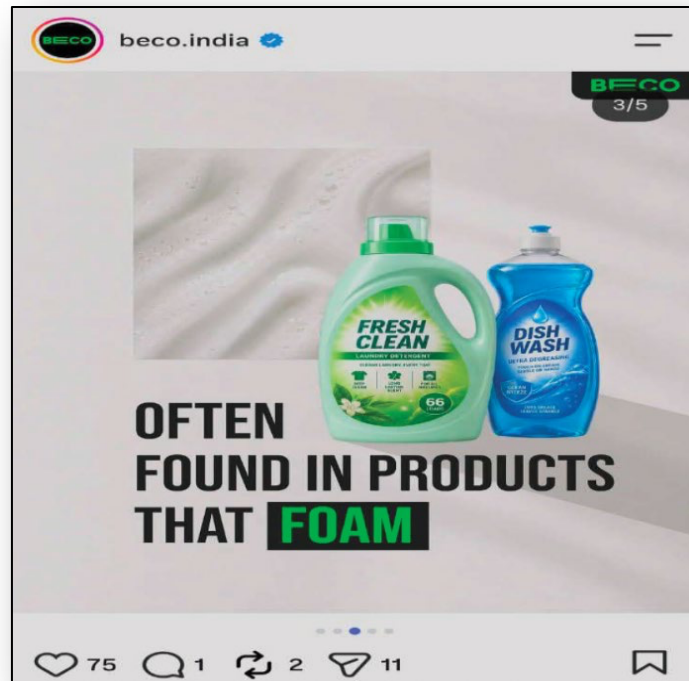
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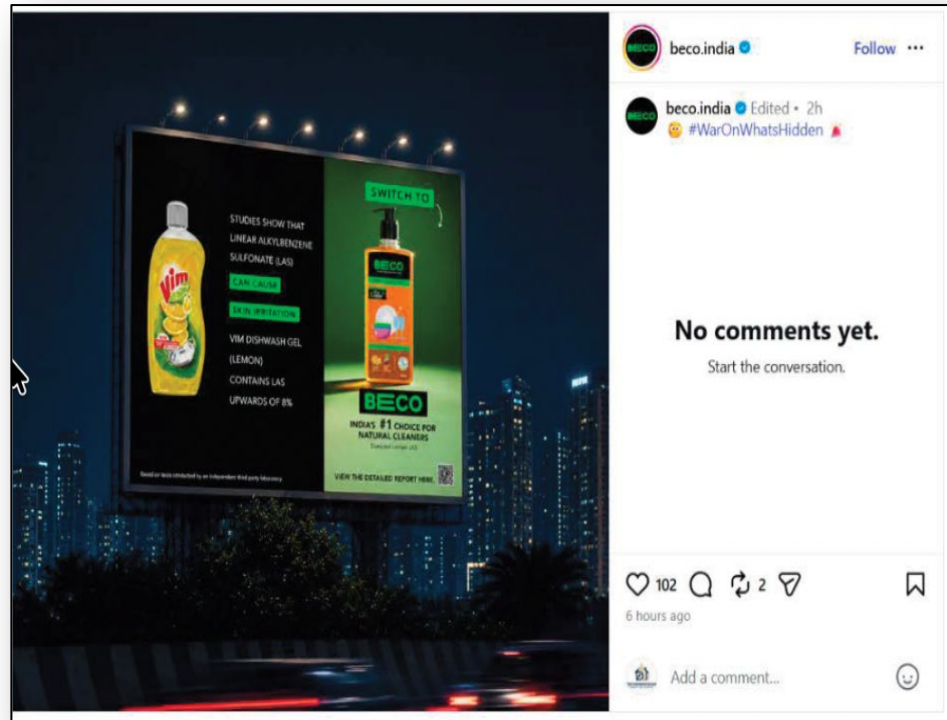
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70. When read and viewed closely, the allegedly offending parts of the impugned campaign contain, broadly, the following statements and material:

70.1. “STUDIES SHOW THAT BENZISOTHIAZOLINONE (BIT), AND LINEAR ALKYL BENZENE SULFONATE (LAS) CAN CAUSE SKIN IRRITATION & ALLERGIC REACTIONS.”

70.2. “SURF EXCEL MATIC LIQUID (TOP LOAD) CONTAINS 277 mg/kg BIT & LAS UPWARDS OF 10%”

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- 70.3. “THIS ISN'T ABOUT FEAR IT'S ABOUT CREATING AWARENESS”
- 70.4. “YEARS OF TRUST BUILT ON WHAT YOU NEVER KNEW UNTIL NOW”
- 70.5. The impugned campaign also highlights prominently that Surf Excel Matic Liquid (Top Load) contains upwards of 10% LAS, and Vim Dishwash Gel (Lemon) contains upwards of 8% LAS. The advertisements also highlight prominently that Surf Excel Matic Liquid (Top Load) contains 277 mg/kg of BIT, and Surf Excel Matic Liquid (Front Load) contains 237.99 mg/kg of BIT.
- 70.6. On the digital media, the slides which contain the foregoing narration also say that the plaintiff's products contain ingredients that cause skin irritation; that those ingredients may be useful for the shelf life of the product but not for the skin of the consumer; that some forms of BIT are restricted for use in Europe; and that the ingredients contained in the plaintiff's products can cause skin irritation, redness, itching, and eczema to users.
- 70.7. The advertisements in video format, that are part of the impugned campaign, insinuate with sarcasm and jest, that though the plaintiff's products do clean clothes and utensils to a shine, they also cause skin irritation ‘free of cost’.
71. It is the defendant's case that, on the point of fact, none of the allegedly offending statements contained in the impugned campaign is false, inasmuch as the plaintiff also does not deny that its products contain BIT

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and LAS, though there may be some discrepancies in the quantities mentioned in the impugned campaign. It is the defendant's contention that the plaintiff also does not deny that the said ingredients are capable of causing skin irritation and related problems.

72. It is, however, the plaintiff's contention that the defendant's impugned campaign is false, or at least misleading, since none of the ingredients referred to in the advertisements, namely BIT or LAS, are likely to cause any harm to a consumer *considering the proportion in which these ingredients are contained in the plaintiff's products* as sold in the market, and if the products are used in the recommended manner.
73. In support of their respective contentions, the plaintiff and the defendant have cited various lab reports analyzing the quantity and concentration of BIT and LAS in the plaintiff's products, as well as the possibility of those ingredients causing harm to a user. The parties have also disputed the methods or tests that have been employed by the other for assessing the possibility of harm to a consumer by use of the plaintiff's products.
74. In this regard, it may only be observed that this court cannot examine, analyse, or draw inferences from the lab reports and other scientific material cited by the parties *at this stage*, since that exercise can only be conducted once the parties lead expert evidence at the trial.
75. To be sure, it *may* well be true that, taken on a standalone and isolated basis, BIT and LAS *can* cause skin irritation and allergic reaction in a particular user, and that the plaintiff's products contain some proportion of BIT and LAS, the position is that the various formats of advertisements



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put out by the defendant *do not use the aforesaid statements on a standalone or isolated basis*. In the impugned campaign the defendant juxtaposes the foregoing statements; and when read together, and when coupled with the visual and pictorial depiction of the plaintiff's products, the *unmistakable overall message* that an average consumer would get is that, since the plaintiff's products contain BIT and LAS, *using them would cause* skin irritation, including redness, itching, or even eczema.

76. Clearly, an average consumer, or for that matter any non-expert, would neither bother nor have the expertise to analyze or deconstruct the narrative contained in the impugned campaign nor would they reason with themselves or undertake a critical, scientific analysis of whether the statements contained in the impugned campaign are true when the plaintiff's products are used in the usual and ordinary way in daily life. When viewed from this perspective, the added narrative in the impugned campaign, namely that the years of trust built in the plaintiff's products may be based on what the consumer *never knew until now*, would most likely shake the consumer's confidence in the said products.
77. What is more, in some of the advertisements, the adjoining panel which places the plaintiff's products alongside the defendant's products, exhorts the viewer to "SWITCH TO BECO", and says in emphatic terms, that BECO "does not contain BIT and LAS" and elsewhere also suggests that the defendant's products are "hypoallergenic", "baby safe" and "pet safe" which betrays the commercial motive of the defendant.

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78. The overall result of these representations contained in the impugned campaign, when perceived together and holistically, is not mere comparative advertising which eulogises the defendant's products as being superior to those of the plaintiff, but denigrates the plaintiff's products *purportedly couched in verified scientific basis*. The impugned campaign further cites complex chemical names, proportions, and percentages of the harmful ingredients to give the viewer a sense of certitude that the plaintiff's products are risky to use. In the opinion of this court, in doing so, the defendant *prima facie* crosses the permissible contours of comparative advertising.
79. This court would hasten to add that comparative advertising, which portrays that a party's product is superior to that of a competitor and thereby shows the competitor's product in a poor light, in an effort to dissuade a consumer from buying the competitor's product, *is not* in and of itself, offensive to the law. However, permissible comparative advertising is subject to the caveat and qualification that it must not be based on statements that are not *truthful* and/or that *misrepresent* a state of affairs and/or that are *deceptive/misleading - in their overall effect and impact*.
80. In the opinion of this court, the impugned campaign *prima facie* falls foul of the above caveats and qualifications, and thereby fails the test of permissible comparative advertising.



81. It is important to add at this point that, though the impugned campaign does not qualify as permissible comparative advertising, it remains open to the defendant to promote and advertise its products in ways that are legally permissible.
82. As a sequitur to the above, this court is persuaded that the plaintiff has succeeded in making out a *prima facie* case in its favour; that the balance of convenience lies in favour of the plaintiff and against the defendant; and irreparable harm and injury would be caused to the plaintiff if the defendant is not restrained from running the impugned campaign.
83. Furthermore, applying the test and standards for the grant of *interim* restraint orders in cases of comparative advertising in the present case, this court is of the view that the defendant has failed to show that what is stated in the impugned campaign is *prima facie* true; or that the relevant and material portions of the impugned campaign *do not* amount to misrepresentation; or that they are *not* deceptive or misleading.
84. Accordingly, the defendant is directed to forthwith pull-down, remove, and recall all advertisements that are subject-matter of the present proceedings, in any form or format or medium, which contain the offending statements referred to above in this judgment, within 01 week from today; and file an affidavit of compliance within 01 week thereafter.
85. Needless to add that the present restraint order is *limited only* to the impugned campaign and is not intended to bar the defendant from



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carrying-out comparative advertising *vis-à-vis* the plaintiff's products otherwise.

86. The application is disposed-of in the above terms.

A. J. BHAMBHANI, J

SEPTEMBER 10, 2026
HMJ

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