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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 21st August 2023*

+ CS(OS) 279/2021, I.As. 7471/2021, 13107/2021 and 13135/2021

DR REDDYS LABORATORIES LIMITED Plaintiff
Through: Mr. Ranjan Narula, Mr. Shashi Ojha, Ms. Aishani Singh and Ms. Shivangi Kohli, Advocates.

versus

THE ADVERTISING STANDARDS COUNCIL OF INDIA Defendant
Through: Ms. Avni Singh, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present suit has been filed by Plaintiff seeking the following reliefs:

“i. A decree and order of permanent injunction restraining the Defendant from creating impediments in the broadcast of the advertisement of the Plaintiffs REBALANZ VITORS product, which is the subject matter of the present suit and filed at page no 5-8 of the documents filed with the present plaint;

ii. An order and declaration that the advertisement of the Plaintiff's REBALANZ VITORS product as filed at page No.5-8 of the documents is fair and truthful and does not constitute a violation of any advertising laws or code and the Plaintiff is entitled to broadcast the advertisement throughout the country;

iii. A decree of permanent injunction be passed against the Defendant thereby staying the impugned order dated 6th May 2021 passed by the Defendant against the advertisement of the plaintiff;

iv. A decree of permanent injunction be passed restraining the Defendant from making any representation to Government bodies on



the basis of the impugned order and/or coerce its members that includes advertising agencies and companies that buy media space on behalf of the Plaintiff to stop airing the advertisement of Plaintiffs REBALANZ VITORS product;

v. A permanent injunction be passed restraining the Defendant from uploading referring the impugned order dated 6th May 2021 on its website/Monthly Report/Annual Report or circulate advertise to its members or general public in any manner;

vi. A decree for damages of Rs. 2,00,00,010/- be passed in favour of the Plaintiffs and against Defendants.

vii. Any other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. This suit has been instituted by the Plaintiff to restrain the Defendant from creating impediments in the broadcast of an advertisement pertaining to fruit-based hydration energy drink sold under the brand name REBALANZ VITORS on YouTube or any other medium. Declaration is also sought to the effect that the advertisement of the Plaintiff is fair and truthful and does not constitute violation of any advertising law or the ASCI Code. It is the case of the Plaintiff that in 2004, Plaintiff launched its product under the trademark REBALANZ in powder form for preventing dehydration and subsequently in February, 2018 the fruit-based hydration energy drink was launched under the trademark REBALANZ QRS which helps in replenishing loss of electrolytes and minerals which rehydrate and re-energise the body and the drink is available in various flavours.

3. On 17.03.2021, to the utter surprise of the Plaintiff, a complaint was received from the Defendant filed by Johnson & Johnson Private Limited, objecting to the advertisements of the Plaintiff in connection with REBALANZ VITORS product, aired on 06.03.2021 on Television and on 10.03.2021 on various social media platforms. This



was followed by the impugned order dated 06.05.2021 directing the Plaintiff to withdraw or modify appropriately the advertisements/commercials on various platforms by 21.05.2021.

4. Mr. Narula, learned counsel for the Plaintiff submits that the advertisement, which is the subject matter of the suit is no longer running and therefore, the relief claimed has become infructuous, however, Plaintiff may run the same or similar advertisement at any time in future and therefore, appropriate order may be passed to protect the interest of the Plaintiff.

5. Ms. Avni Singh, learned counsel for the Defendant, in response to the submissions made by Mr. Narula fairly submits that a similar issue had arisen in ***W.P.(C) 5171/2011 titled Kent RO Systems Ltd. v. Union of India and Another***, which was disposed of vide order dated 08.01.2016 and similar order can be passed in the present suit. Copy of the order has been handed over to Mr. Narula, who on perusal of the order, has no objection to a similar order being passed.

6. I have heard learned counsels for the parties and examined their submissions. For ready reference, relevant part of the order dated 08.01.2016 is extracted hereunder:

“8. I am of the opinion that there is no need to keep these petitions pending any longer. It is the contention of the counsel for the respondent No.2 ASCI that neither of the two petitioners, notwithstanding the stay orders granted by this Court, are using the advertisement with respect whereto the impugned orders of the respondent No.2 ASCI were passed and thus the writ petitions have also become infructuous.

9. The counsel for the petitioner in W.P.(C) No.5171/2011 contends that though the petitioner therein is presently not using the said advertisement but can use the same advertisement at any time in future and that the tagline to which objection is taken by ASCI can be in any other advertisement and thus the petition cannot be said to have become infructuous. She further states that the petition is



required to be decided also because the respondent No.2 ASCI repeatedly objects to the advertisements brought out by the petitioner from time to time.

10. *As far as the contention aforesaid, of the respondent No.2 ASCI repeatedly interfering in the advertisements of the petitioner is concerned, this Court cannot grant any pre-emptive relief restraining the respondent No.2 ASCI from passing any order which it is entitled to with respect to any other advertisement of the petitioner. The petitioner will have to avail of appropriate remedies with respect to order if any of ASCI concerning any other advertisement of the petitioner.*

11. *As far as the contention, that the petitioner though presently is not using the subject advertisement but can use it in future and the contention that the petitioner can use the tagline to which objection is taken, in any other advertisement are concerned, I am of the view that in case the petitioner, in future, uses the same advertisement and objection thereto is again taken by ASCI, it will be open to the petitioner to then avail remedies thereagainst. I am also of the view that the use by the petitioner of the tagline in the subject advertisement, to which objection was taken in order dated 8th July, 2011, is not prohibited by the said order. I say so because (i) each advertisement relates to its own time and what was objectionable in 2011 may not be considered objectionable today, and, (ii) the tagline to which objection was taken in subject advertisement even if used in another advertisement may not be objectionable as the same has to be seen in the context of the advertisement. We are today living in a fast changing society norms whereof, and in context whereof objections if any to advertisement are to be judged, are changing rapidly. What human behaviour may have been objectionable in 2011 or in 2013 is not necessarily objectionable today. This Court cannot involve itself in an academic exercise, an exercise in vacuum and ought to devote its precious time to issues of the moment."*

7. Since the advertisement, which is the subject matter of the present suit is no longer running, the reliefs claimed have become infructuous and to this extent, no order is required to be passed. Counsel for Defendant/ASCI states that the said Authority has no power to pass a punitive order or an order entailing civil consequences against an advertiser and if inspite of the direction of ASCI, the advertiser does not suspend the advertisement, ASCI only includes the offending advertisement in the ASCI media release, issued once in



three months and circulated to all ASCI members, concerned association of practitioners of advertising and Government Authorities including Ministry of Information and Broadcasting. In view of this stand as also the fact that this Court at this stage cannot pass pre-emptory orders for future advertisements, the suit is disposed of observing that if Plaintiff issues the same advertisement in future and ASCI objects thereto, Plaintiff shall be entitled to take recourse to legal remedies.

8. Suit stands disposed of in the above terms alongwith all pending applications.

JYOTI SINGH, J

AUGUST 21, 2023/ck