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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of Decision: 18<sup>th</sup> January, 2024*  
+ **CS(OS) 44/2024, I.As. 1110/2024, 1111/2024, 1112/2024, 1113/2024  
& 1114/2024**

**MS KENT RO SYSTEMS LTD**

..... Plaintiff

Through: Mr. Darpan Wadhwa, Sr. Adv along  
with Ms. Ruchira Gupta, Ms. Harshita  
Sharma, Ms. Neelakshi Bhadauria,  
Ms. Divita Vyas, Amer Vaid Advs.  
(M. 8826078776)

versus

**THE ADVERTISING STANDARDS COUNCIL  
OF INDIA THROUGH ITS GENERAL  
SECRETARY & ORS.**

..... Defendants

Through: Ms. Avni Singh, Adv. for D-1 (M.  
9958018998)  
Mr. Vineet Dhanda CGSC, for R 2  
and 3 (M. 9811013810)

**CORAM:  
JUSTICE PRATHIBA M. SINGH**

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

1. This hearing has been done through hybrid mode.

**I.A. 1111/2024 (for exemption)**

2. This is an application seeking exemption from filing certified/typed  
copies of documents, proper margins, electronic documents, etc.

3. Exemption is allowed, subject to all just exceptions. Accordingly,  
application is disposed of.

**I.A. 1112/2024 (for exemption)**

4. Allowed, subject to all just exceptions. Application is disposed of.

**I.A. 1114/2024 (for Court fee)**



5. This is an application for extension of time for filing the Court fee. The Court fee is stated to have been deposited. Accordingly, the application is disposed of as infructuous.

**I.A. 1113/2024 [u/S 80(2) of CPC]**

6. This is an application filed by the Plaintiff, seeking exemption from serving a notice under Section 80 of the CPC to Defendant No. 2 – Department of Consumer Affairs, Ministry of Consumer Affairs, Food & Public Distribution and Defendant No. 3 – Union of India.

7. Considering the urgency in this matter, exemption is allowed. Mr. Vineet Dhanda, Id. Central Government Standing Counsel (CGSC) accepts notice.

8. Accordingly, application is disposed of.

**CS(COMM) 44/2024**

9. Let the plaint be registered as a suit.

10. Issue summons to the Defendants through all modes upon filing of Process Fee.

11. Summons are accepted by Ms. Avni Singh, Id. Counsel for Defendant No. 1 and by Mr. Vineet Dhanda, Id. CGSC on behalf of Defendant No. 2 - Department of Consumer Affairs, Ministry of Consumer Affairs, Food & Public Distribution, and Defendant No. 3 - Union of India.

12. Let the written statement to the plaint be filed within 30 days. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record.

13. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement(s). Along with the replication, if any,



filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

14. Considering the large number of Defendants that have been impleaded in this matter, service by e-mail is permitted both by the Registry as also by the Plaintiff.

15. List before the Joint Registrar for marking of exhibits on 19th March, 2024.

16. List before Court on 17th May, 2024.

17. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

**I.A. 1110/2024 (u/O XXXIX Rules 1 & 2 CPC)**

18. Issue notice to Defendant No. 1 and Defendant Nos.2 and 3.

19. Ms. Avni accepts notice on behalf of Defendant No.1. Mr. Vineet Dhanda, ld. CGSC accepts notice on behalf of Defendant Nos. 2 and 3.

20. The present suit is for declaration and permanent injunction filed by the Plaintiff - M/s Kent RO Systems Ltd'. (*hereinafter 'Kent'*) against the impugned order dated 29th December, 2023 passed by the Advertising Standards Council of India (*hereinafter 'ASCI'*). The Plaintiff is the manufacturer of water purifiers and has as its brand ambassador renowned actress, Ms. Hema Malini. Sometime since 2007, the Plaintiff has been publishing and advertising which is noticed in the impugned order as under:

*“The CCC noted the arguments by the advertiser that the tagline **"Kent deta hai sabse shudh paani-"** have been used for the past 16 years and that the statement was a puffery and not advertisement specific but*



*pertains to their tagline for the brand which is being used since 2007.”*

21. M/s TTK Prestige Limited filed a complaint with ASCI on 17th May, 2023 on the ground that the said advertisement does not comply with the advertising code of ASCI. The Plaintiff was then issued a notice and it appeared before the ASCI and tried to justify its position. The ASCI, then directed as under, vide the impugned order:

*“The CCC observed that the advertisement opens with a claim, “Kent se paani hota hai ‘100% Pure” by the celebrity endorser (Hema Malini), then moves onto a frame that shows a visual of the machine with a voiceover that says, “Kent RO purity dikhata bhi hai” followed by the claim, “Kent deta hai sabse shudh paani”.*

*The CCC discussed that in the context of the current advertisement where it opens with a claim, Kent se paani hota hai ‘100% Pure” followed by the visuals of the machine being able to demonstrate purity with the voiceover claim, “Kent RO purity dikhata bhi hai” in conjunction with the claim, “Kent deta hai sabse shudh paani” are likely to be understood by an average consumer as comparative claims for the product, ‘Kent Mineral RO water purifier’ which provides the purest water rather than being understood as puffery or an exaggeration.*

*The CCC further discussed that, based on the data provided by the advertiser, it can be concluded that the Kent water purifier provides drinking water that is purified/safe for human use. However, given that the claim is comparative, there was no evidence of comparison provided in the form of a verifiable comparative clinical data/study conducted comparing*



*the advertiser's water purifier to other water purifier brands to prove that their water purifier gives purer water than other water purifier brands.*

*The CCC noted the arguments by the advertiser that the tagline "Kent deta hai sabse shudh paani-" have been used for the past 16 years and that the statement was a puffery and not advertisement specific but pertains to their tagline for the brand which is being used since 2007".*

*The CCC further deliberated that regardless of the tagline used over the years, to an average consumer, it portrays that only Kent offers the purest water compared to other water purifier brands. Therefore, the period of the claim being used is not considered, as there was no supporting data or evidence provided to substantiate the comparative nature of the claim in the advertisement with other water purifier brands currently available in the market.*

*Based on these observations, the CCC concluded that the claim, "Kent deta hai sabse shudh paani", is not substantiated with verifiable comparative data. The claim is misleading by exaggeration and is likely to lead to widespread disappointment in the minds of consumers. The said claim in the advertisement contravened Chapter I, Clauses I.1, I.4 and I.5 of the ASCI Code. This complaint was UPHOLD.*

*In view of the above CCC recommendation may we request you to suitably modify the above referred advertisement and withdraw the claims objected to within ten business days. You may have a call with the designated officer Ms. Manali Kulkarni on +91 9004 509 413, if you wish to seek any guidance on the way forward.*



22. This recommendation of ASCI has now been sent to various broadcasters and is under challenge in the present suit.

23. The submission of Mr. Darpan Wadhwa, Id. Senior Counsel for the Plaintiff is as under:

i) The Plaintiff is not a member of ASCI and is therefore not bound by the code for self-regulation published by the ASCI. He relies upon the following decisions:

- *Century Plyboards (India) Ltd. v. Advertising Standards Council of India, MANU/MH/0030/2000*
- *Teleshop Teleshopping v. Advertising Standards Council of India and Another, 2015 SCC OnLine Bom 8777*
- *Dish Tv India Limited v. The Advertising Standards Council of India, MANU/DE/3049/2016*

ii) The next submission on behalf of the Plaintiff is that the advertisement is sought to be restrained at the behest of a competitor, who is a member of ASCI. Thus, there is an institutional bias by ASCI.

iii) Id. Counsel further submits that the advertisement which has been running for more than almost 15 years, is sought to be restrained on the ground that it is misleading when admittedly the Plaintiff has trade mark rights and copyrights on the tagline '*Kent deta hai sabse shudh paani*'.

iv) The expression which is objected to by ASCI is nothing but puffery which is a recognized form of advertising, as per the settled case law.

24. On behalf of the Defendant - ASCI, objections are raised by Ms. Avni



Singh, ld. Counsel to the following effect:

- i) That the present matter is in the nature of *quia timet* action as no effect has been felt in view of the impugned recommendation. Neither the channel nor any governmental authority has taken any action against the Plaintiff and therefore the suit is premature.
- ii) The ld. Counsel submits that since ASCI is a regulatory body of the industry, the question as to whether it would be binding on non-members, has now been considered by this Court in ***Metro Tyres Ltd. v. The Advertising Standards Council of India & Anr., 2017: DHC: 1585*** as also by the Supreme Court of Court of Appeal of South Africa, in ***Advertising Regulatory Board NPC Colgate-Palmolive (Pty) Ltd Colgate-Palmolive Company v. Bliss Brands (Pty) Ltd. [2022] ZASCA 51 (12 April 2022)*** wherein under similar circumstances, the Court has held that the recommendation of such a self-regulatory body would be binding on even non-members.
- iii) She further submits that even on merits, the Plaintiff has participated in the proceedings and hence cannot raise the issue of it being a non-member.
- iv) Finally, she submits that on merits, the Plaintiff did not give any substantiation for the representation made in its advertisements. The only documents were a Court order dated 22nd November, 2022, a short affidavit dated 24th May, 2022 filed in ***CS(OS) 2806/2015-*** titled ***Kent Ro Systems Limited v. The Advertising Standards Council of India*** and links to other brands who have made similar claims. Thus, she submits that there was no substantiation which the Plaintiff relied upon leading to the impugned recommendation.



25. The Court has heard the Id. Senior Counsel for the Plaintiff and the Id. Counsel for the Defendant. There are various issues which arise in this suit. Apart from the submissions made on behalf of the parties themselves, an additional issue would arise as to whether ASCI's jurisdiction has been exercised in a case involving competitive advertising. If so, the matter would have to be listed before the Intellectual Property Division of the Delhi High Court which deals with comparative advertising and related matters.

26. Be that as it may, on the merits of the matter, the Court observes that advertising is a part of commercial speech which is a recognized aspect of Article 19(1)(a) of the Constitution of India. In order for any restraint to be placed on such a right, there has to be authority of law. In addition it is the settled legal position that Puffery in advertising is permissible so long as there is no deception and consumer interest is not compromised. In the present case, the complaint is not by a consumer but by a competitor i.e., TTK Prestige. No consumer has complained that he/she is misled due to the exaggeration that the Plaintiff gives the most pure water. Such exaggerations, puffery, hyperbole is part of advertising which cannot be completely curtailed, except in accordance with law. In the field of advertising some 'play in the joints' is always recognised and permitted.

27. In *Colgate Palmolive Co. and Ors. v. Hindustan Unilever Ltd.* [MANU/DE/4536/2013], the Id. Division Bench observed as follows:

**“26. 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:*

...

...

*28. Thus, as long as claims made in an advertisement are considered only as puffery, no interference with the same by the courts would be warranted. This is for a simple reason that puffing involves expressing opinions and are not considered as statements of fact which can be taken seriously. As puffery is neither intended to make a representation as to facts nor is considered as such by the target audience. The advertisement involving puffery, thus, cannot be stated to be misrepresenting facts. It is common for advertisements to make extravagant and exaggerated claims in relation to goods and services. It is expected that an advertiser would embellish the goods and services that are advertised and such puffery is neither expected to be nor is taken seriously by any average person.*

... ”

28. The ASCI being a body which regulates the conduct of its members and its code being self-regulatory in nature, there is a divergence of opinion as to whether the Code would apply to non-members. The three decisions cited by the Id. Counsel for the Plaintiff hold that ASCI does not exercise jurisdiction over non-members and the decision in *Metro (supra)* holds exactly the opposite. Thus, the issue as to whether ASCI's jurisdiction



would extend upon non-members, deserves to be considered.

29. In addition, this Court has also persuaded on behalf of the Plaintiff that the advertisement-in-question has been broadcasted since 2007 i.e., for more than 15 years. Under such circumstances, the Court is also not inclined to permit the order of ASCI to have an effect on the Plaintiff thereby curtailing its advertising right. Accordingly, *prima facie*, the Court finds in favour of the Plaintiff that while the issues which have been raised deserve to be considered, interim protection deserves to be granted in favour of the Plaintiff staying the order passed by the ASCI dated 29th December, 2023.

30. The submissions raised by ASCI may be raised as part of the written statement so that the same can be considered by this Court at the time of hearing in the injunction application on merits. Accordingly, till the next date of hearing, there shall be a stay of order dated 29th December, 2023 passed by the ASCI.

31. Compliance of Order XXXIX Rule 3 CPC be done within one week.

32. Reply to the application be filed within four weeks from the service of the present order along with the paper book.

32. List on 17th May, 2024.

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

**JANUARY 18, 2024**

*Rahul/bh*