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

Date of decision: 15th February, 2021

+ **W.P.(C) 1971/2021 & CM APPLs. 5764/2021 & 5765/2021**

TV TODAY NETWORK LIMITED Petitioner

Through: Mr. Gopal Jain, Sr. Advocate with
Mr. Shahruk Ejaz, Advocate.

versus

UNION OF INDIA Respondent

Through: Mr. Chetan Sharma, ASG with Ms.
Monika Arora, CGSC & Mr. Shriram
Tiwary, Mr. Amit Gupta, Mr. Vinay
Yadav, Mr. Akshay Gadeock, Mr.
Sahaj Garg, Mr. R. Venkat,
Advocates with Mr. Girish Chand
Aron, Director, I&B Ministry.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(Oral)

1. This hearing has been done through video conferencing.
2. The distinction between club soda and whisky is at the core of the dispute in the present case. For persons who consume the same, the distinction is quite clear! However, in the case of advertisements which are alleged to be surrogate, the lines are blurred.
3. The allegation of the Respondent is that the Petitioner ran an advertisement of "All Seasons" Club Soda which was a surrogate advertisement for "All Seasons" Whisky, sold in a similar bottle and layout. The telecast of the advertisement took place during the LIVE coverage of the Independence Day event. The footage which was shown to the Court shows that in the said live telecast, an 'L' shaped advertisement was broadcast on the 'Aaj Tak' TV channel, which, according to the Petitioner,

relates to the “*All Seasons*” Club soda product. The Ministry of Information and Broadcasting (*hereinafter, ‘I&B Ministry’*), however, found the same objectionable in terms of the provisions of the Cable Television Networks (Regulation) Act, 1995 and issued a show cause notice on 7th September, 2020. Reply to the said notice was also filed by the Petitioner. After hearing the Petitioner, the I&B Ministry came to the conclusion that the colour and layout of the bottle being the same as the whisky bottle of the advertiser, the advertisement is nothing but surrogate advertising and hence, the direction to issue an apology was imposed.

4. The present petition is accordingly filed challenging the impugned order dated 9th February, 2021 by which the I&B Ministry has directed the Petitioner to run an apology scroll in bold legible font at the bottom of the screen for two days continuously, with effect from 0001 hours on 16th February, 2021 to 0001 hours on 18th February, 2021. The operative portion of the order reads:

“..

WHEREAS the Competent Authority, having considered all the facts and circumstances of the case, including the recording, the written submission of Aaj Tak TV channel, the recommendations of the IMC, the provisions of the Cable Television Networks (Regulation) Act, 1995 and the Rules framed thereunder, has come to a conclusion that there was a clear violation of Rule 7(2)(viii)(A) of the Advertising Code.

*NOW, THEREFORE, having regard to the totality of the circumstances, as explained above, the Competent Authority in the Ministry of Information & Broadcasting, hereby **directs Aaj Tak TV channel to run an Apology Scroll in bold legible form at the bottom of the screen***

for two days continuously with effect from 0001 hours on 16.02.2021 till 0001 hours on 18.02.2021.

Strict compliance with the above direction will be ensured by Aaj Tak IV channel ...”

5. Mr. Gopal Jain, Id. Senior Counsel submits that the channel had taken all possible steps and had exercised due diligence by calling for a Chartered Accountant's certificate in relation to the sales of "All Seasons" Club Soda. The channel had also ensured that the product being advertised was club soda and not whisky. Id. Sr counsel further submits that the soda product of the advertiser is sold both in glass and bottles. The impugned order does not consider this aspect.

6. On the other hand, Mr. Chetan Sharma, Id. ASG along with the Id. CGSC, duly instructed by Mr. Girish Chandra Aron, Director, I&B Ministry, submits that the objectionable aspect of the advertisement was the colour and layout of the bottle as also the timing of it, which was inappropriate, leading to the issuance of the show cause notice.

7. This Court has considered the video footage which was shown by Id. Counsel for the Petitioner, as also the notice, reply and impugned order.

8. The Cable Television Network Rules, 1994, stipulate under Rules 6 and 7 the 'Programme Code' and 'Advertising Code'. However, the consequences of violation thereof, are not clearly provided for. The matter thus requires consideration.

9. At this stage, the Court is only looking at what the interim relief, if any, ought to be granted considering that the apology has to be shown by the Petitioner from tonight from 0001 hours. Admittedly, there are no clear regulations as to the extent of penalty and punishment that can be imposed

in case an advertisement is found to be objectionable and violative of the '*Advertising Code*'.

10. The counsel for the Petitioner has, during the video-conference hearing, exhibited the bottle used by the advertiser for Club Soda and Whisky. From a first look at the same, they appear very similar. The fact that the Whisky bottle and the Club Soda bottle used, have the same look and feel/trade dress, this Court is of the opinion that the entire order cannot be interdicted and stayed. The identity between the two product containers and the fact that the Petitioner uses an alternate bottle for its Club Soda, do raise questions relating to '*Surrogate advertising*'. However, considering that the measure imposed also cannot be disproportionate and keeping in mind that the apology so directed ought not to interfere unreasonably with the normal telecast of the channel, the frequency of the apology and the duration deserves to be curtailed/reduced.

11. Accordingly, at this stage, the Petitioner is directed to run a 10 second apology every hour between 8:00 a.m. to 8:00 p.m. on two days i.e., 16th February, 2021 and 17th February, 2021.

12. CM APPL. 5764/2021 is disposed of in the above terms. Let the counter affidavit to the writ petition be filed within four weeks. Rejoinder be filed within four weeks thereafter. In the counter affidavit, the I&B Ministry shall specifically state if there is any uniform policy followed by it in imposing penalties for violation of the '*Programme Code*' or '*Advertising Code*'.

13. List on 5th July, 2021.

PRATHIBA M. SINGH, J

FEBRUARY 15, 2021

Rahul/C