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

\+ CS(COMM) 1195/2024, I.A. 49744/2024 & I.A. 419/2025

DABUR INDIA LIMITED .....Plaintiff

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. R. Jawahar Lal, Mr. Anirudh Bakhru and Ms. Meghna Kumar, Advocates
M: 9750610115

versus

PATANJALI AYURVED LIMITED AND ANR. .....Defendants

Through: Mr. Rajiv Nayar, Sr. Adv. and Mr. Jayant Mehta, Sr. Adv. with Mr. Rohit Gandhi, Mr. Simranjeet Singh, Mr. Saurabh Seth, Ms. Neha Gupta, Mr. Rishabh Pant, Mr. Yajat Gulia and Ms. Tina Aneja, Advocates.
M: 9971919424

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

% 03.07.2025

MINI PUSHKARNA, J:

I.A. 49744/2024 & I.A. 419/2025

1. The present suit has been filed seeking a decree of permanent and mandatory injunction against the advertisements of the defendants for their product, namely, 'Patanjali Special Chyawanprash', alleging disparagement and denigration of plaintiff's product, namely, 'Dabur Chyawanprash', and the entire class of Chyawanprash in general.

2. *I.A. No. 49744/2024* has been filed seeking interim relief *qua* the impugned Hindi television commercial ("TVC") and impugned Hindi print advertisement issued by the defendants. *I.A. No. 419/2025* has been filed seeking interim relief *qua* impugned English print advertisement issued by the defendants. The said impugned TVC and Hindi and English print advertisements ("Print Advertisements") have been issued by the defendants in relation to their product, 'Patanjali Special Chyawanprash'. It is the case of the plaintiff that by way of the impugned TVC and Print Advertisements, the defendants have disparaged 'Dabur Chyawanprash' specifically, and Chyawanprash in general, and the same constitutes specific as well as generic disparagement. The plaintiff has further pleaded that false and misleading statements have been made in the impugned TVC and Print Advertisements in disparaging comparison with 'Dabur Chyawanprash' and other existing Chyawanprash in the market.

3. It is the case of the plaintiff that in the impugned TVC and Print Advertisements, the defendants have clearly and undisputedly identified, denigrated and disparaged plaintiff's 'Dabur Chyawanprash' and disparaged all Chyawanprash in the market. Hence, the present suit has been filed seeking permanent and mandatory injunction, and damages for denigration and disparagement. The present applications have been filed seeking interim relief of stay on the TVC and Print Advertisements.

Submissions on behalf of the plaintiff:

4.1 Defendants have clearly identified and disparaged plaintiff's 'Dabur Chyawanprash' in their impugned Print Advertisements, by specifically mentioning '40 herbs' and urging consumers not to settle for or buy Chyawanprash containing 40 herbs. Plaintiff is the market leader in

Chyawanprash product category with 61.60% market share as of October, 2024, and it is a known fact that plaintiff's 'Dabur Chyawanprash' is widely advertised as containing '40+ herbs'.

4.2 The language of the impugned TVC, specifically the line, *"Jinko Ayurved aur Vedo ka gyaan nahi, Charak, Sushrut, Dhanvantri aur Chyawanrishi ki Parampara ke anuroop, Original Chyawanprash kaise bana payinge?",* falsely conveys to the customers that only the defendants have the knowledge to prepare Chyawanprash and other manufacturers do not follow the correct tradition and consequently, that the other products available in the market are ordinary, i.e., fake.

4.3 Defendants cannot say that plaintiff and other manufacturers of Chyawanprash lack the necessary knowledge and technical know-how to prepare Chyawanprash as it is a classical ayurvedic medicine as per Section 3(a) of the Drugs and Cosmetics Act, 1940 ("Drugs and Cosmetics Act"). As per the definition of Ayurvedic, Siddha or Unani ("ASU") drug under the Drugs and Cosmetics Act, there is no mandate or requirement for a manufacturer to first have 'knowledge' of Ayurveda or Vedas to make Chyawanprash. Any set of ingredients and formulae/recipe prescribed in any of the authoritative books mentioned in the First Schedule of the Drugs and Cosmetics Act can be followed to make Chyawanprash.

4.4 By stating that defendants' product is 'special' and other Chyawanprash are 'ordinary', defendants have disparaged the entire class of Chyawanprash in general. Defendants have used the word 'ordinary' in a negative way to denigrate plaintiff's product as inferior, below average, or just plain. All licensed Chyawanprash products are made in accordance with the Drugs and Cosmetics Act and are classical ayurvedic medicine, and

therefore, there cannot be 'ordinary Chyawanprash'.

4.5 Recipe used by the defendants is from the authoritative text, *Ayurved Sar Sanhita* and is titled as, 'Chyawanprash (Special)'. In accordance with Rule 161(3)(i) of the Drug Rules, 1945 ("Drug Rules"), which mandates that the name of the ASU drug for which license has been obtained should be the same as mentioned in the authoritative books as per First Schedule of Drugs and Cosmetics Act, defendants were required to name their ASU drug product - 'Patanjali Chyawanprash (Special)', and not 'Patanjali Special Chyawanprash', as it changes the whole context of the word 'special' and disparages other Chyawanprash products as well. Use of prefix 'special' is also violative of Rule 157(1B) of the Drug Rules.

4.6 Product in question is an ASU drug under the Drugs and Cosmetics Act and therefore, the standards to be applied in respect of misleading advertisements must be higher and a stricter approach must be adopted.

4.7 An average person would necessarily be influenced by the impugned TVC wherein Mr. Ramdev, who is an acknowledged yoga and vedic expert, categorises his product as 'special/original', and others as 'ordinary'.

4.8 The impugned Print Advertisements falsely convey to the customer that plaintiff's Chyawanprash is inferior, as it contains only 40 ingredients and customers should opt for a superior product which has 51 ayurvedic herbs. Whereas, defendants have themselves admitted that their product contains 46 herbs and the usage of '51 herbs' is by and large truthful in oral arguments as well as in Para 19 of their Reply to *I.A. 49744/2024*. Recipe followed by defendants as per *Ayurved Sar Sanhita* includes ingredients such as *ghee*, *chini*, *chandi ka vark*, etc., which cannot be classified as 'ayurvedic herbs/*jadi bootiyaan*' as claimed by defendants, and are simply

ayurvedic ingredients. Such statement constitutes blatant misrepresentation in order to influence customers to reject other Chyawanprash in favour of healthier Chyawanprash. It is settled law that untruthful comparison is impermissible.

4.9 Defendants, instead of promoting positive attributes of their product, falsely claim that all other Chyawanprash, including 'Dabur Chyawanprash', offer no immunity. This amounts to generic as well as specific disparagement.

4.10 Defendants' 'Patanjali Special Chyawanprash' contains mercury. The Drugs and Cosmetics Act and the Drug Rules made thereunder, specifically Rule 161(2), mandate that a product containing mercury or any Schedule E(I) substance, has to carry the disclaimer, *"Caution: To be consumed under medical supervision"*, which is absent from the defendants' advertisements. Despite not having printed the aforenoted advisory in their impugned advertisements, the defendants have specifically promoted their product to *'masoom bacche'*/infants and children and the same is against public interest.

4.11 Defendants' advertisements are misleading as, firstly, they cause deception/have the potential to deceive the public, and secondly, because of such deceptive nature, they can affect the economic behaviour of the public.

4.12 Misstatements made by defendants are serious statements of fact, made in the context of an ayurvedic drug under the Drugs and Cosmetics Act, and cannot be regarded as puffery. The truthfulness of such assertions or statements of fact is to be strictly tested.

Submissions on behalf of the defendants:

5.1 Impugned TVC and Print Advertisements are instances of puffery,

wherein, the additional positive attributes of defendants' product are being highlighted and consumers are encouraged to opt for the same. There is no mention or identification, either verbal or visual, of plaintiff's product or any other Chyawanprash product in the impugned TVC or Print Advertisements. Puffery is not actionable and does not amount to disparagement as it is not taken literally by average customer and therefore, some level of untruth is acceptable.

5.2 If no specific reference is made to plaintiff's product, the plaintiff cannot claim that it is being specifically targeted solely on the basis of its dominant market share.

5.3 Impugned TVC must be considered in entirety and not frame-to-frame. When taken as a whole, the advertisements only highlight the distinguishing qualities of defendants' product. Use of 'ordinary' is only to highlight defendants' product as a healthier alternative with more ingredients and not to disparage or denigrate other Chyawanprash products. The word 'ordinary' is used by defendants only as an identifier of existing products in the market, and not intended to disparage.

5.4 Commercial advertising is protected as a fundamental right under right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. Certain amount of implied disparagement is inherent in commercial advertising as long as competitor's brand is not identifiable and not disparaged specifically. Furthermore, content of commercial advertisement only needs to be 'by and large truthful'. Certain reasonable degree of creative freedom is allowed in advertising and plaintiff cannot be hyper-technical as comparative advertisement is permissible and promoted.

5.5 No reasonable man of average intelligence viewing or reading the

impugned advertisements would view it as a derogation of plaintiff's product or any other Chyawanprash product.

5.6 Defendants' product is based upon the formulation titled, 'Special Chyawanprash', prescribed in the *Ayurved Sar Sanhita* authoritative text. The name of defendants' product is in accordance with the one provided in the authoritative text and thus, not violative of Rule 157(1B) of the Drug Rules. Further, the defendant no. 2 holds a valid license from the Licensing Officer, Ayurvedic & Unani Services, Dehradun, Uttarakhand, for manufacturing its product in the name of 'Special Chyawanprash'.

5.7 The plaintiff has itself admitted that defendants' product contains 55 ingredients. The issue of ingredients and herbs is a subject matter of trial and detailed examination, which cannot be done at interim stage. There is no case of misrepresentation.

5.8 '*Makardhwaj'* is prescribed as one of the ingredients in the *'Special Chyawanprash'* formulation as per *Ayurved Sar Sanhita*. Plaintiff's reliance on Schedule E(I) of the Drug Rules is misplaced as the same contains poisonous substances, such as mercury, and not '*makardhwaj'*. '*Makardhwaj'* is a combination of purified *parada* (mercury), sulphur and gold, which is an ayurvedic mineral herbal combination and is used as an ingredient in ayurvedic formulations.

5.9 'Patanjali Special Chyawanprash' contains the label – *"1-2 tablespoon with warm milk in the morning and evening or as directed by physician"*, and also cautions diabetic patients regarding consumption. Arguendo, even if there is any issue with respect to the labelling of defendants' product, the same is only actionable under Section 331(2) read with Section 33M of the Drugs and Cosmetics Act.

5.10 No relief which is itself in the nature of a final relief, can be granted at the interim stage, and therefore, plaintiff is not entitled to any interim relief as the prayers sought in *I.A. 49744/2024* and *I.A. 419/2025* are identical to the prayer in the suit.

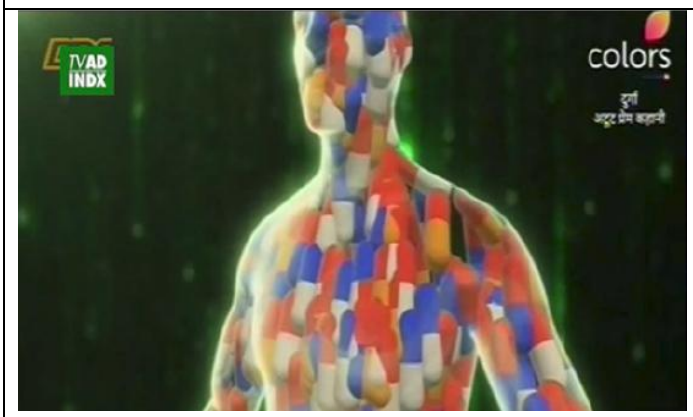
6. I have heard learned counsels for the parties and have perused the record.

Storyline of the impugned TVC and Print Advertisements

7. At the outset, this Court takes note of the story board of the impugned TVC, as follows:

	Jinko Ayurved or Vedon ka gyaan nahi Translation: Those who do not possess knowledge of Ayurveda or Vedas
	Charak, Sushrut, Dhanvantri aur Chyawanrishi Translation: Charak, Sushrut, Dhanvantri and Chyawanrishi

	Ki parampara ke anuroop, original Chyawanprash kaise bana payenge Translation: In accordance with the said traditions / procedures, how will they prepare original Chyawanprash?
	Humne rishiyon ki virasat Translation: We, who possess the heritage of Sages
	Aur vigyan ke anusar 51 beshkeemti jadi bootiyon Translation: And based on their (sages') knowledge, using 51 priceless medicinal herbs

	Aur kesar yukta Translation: And with Saffron
	Patanjali Special Chyawanprash banaya Translation: We have prepared Patanjali Special Chyawanprash
	Jo aapke shareer ko medical store banne se bachata hai Translation: Which prevents your bodies from becoming a medical store

	Aapke masson bacchon aur parivar ke immunity ko badhata hai. Translation: And boosts the immunity of your innocent children and families.
	Jab shreshtam Patanjali Chyawanprash hai Translation: When the best Chyawanprash, i.e., Patanjali, is there …
	Toh ordinary Chyawanprash kyu? Translation: …Then why choose ordinary Chyawanprash?

8. Perusal of the aforesaid story board shows that the impugned TVC opens with the question – *"Jinko Ayurved aur Vedo ka gyaan nahi, Charak, Sushrut, Dhanvantri aur Chyawanrishi ki parampara ke anuroop, original Chyawanprash kaise bana payenge?"* – posed by Mr. Ramdev, while sitting under a tree in a meditative yoga posture. He is shown perusing authoritative texts/*rishiyon ki virasat* while his voice-over informs the audience that 'Patanjali Special Chyawanprash' contains 51 precious herbs and is made in

accordance with science and the inherited knowledge of great sages, which prevents the human body from becoming a medical store. It is further conveyed that 'Patanjali Special Chyawanprash' enhances the immunity of innocent children and families. The advertisement concludes with another question being put to the audience – *"Jab shreshtam Patanjali Chyawanprash hai, toh ordinary Chyawanprash kyu?*" – and Mr. Ramdev is shown consuming 'Patanjali Special Chyawanprash'.

9. Apart from the impugned TVC, the plaintiff is also aggrieved by the Hindi as well as English print advertisements in relation to defendants' 'Patanjali Special Chyawanprash', which are reproduced as under:

10. As is evident from the perusal of the aforenoted impugned Print Advertisements, 'Patanjali Special Chyawanprash', having 51 precious herbs and saffron, is shown as a better/superior alternative to 'ordinary' Chyawanprash which, in comparison, has only 40 herbs. Echoing the storyline and sentiment of the TVC, the Print Advertisements, while again

featuring Mr. Ramdev consuming the product in question, emphasize that defendants truly follow the tradition of Ayurveda established by the great sages, Sushrut, Charak and Chyawan. A similar question as in the impugned TVC is posed to the audience by way of the Print Advertisements – *"Why settle for ordinary Chyawanprash made with 40 herbs?".* This Court further notes the information printed at the bottom portion of the Print Advertisements which seeks to inform the reader that for the first time a research paper has been published in a journal titled, 'Frontiers of Pharmacology', on 'Patanjali Special Chyawanprash' which purportedly verifies that it is the best Chyawanprash as it reduces inflammation and boosts immunity.

Analysis & Discussion

11. Before dilating upon the merits of the contentions raised by both the parties, this Court deems it proper to discuss the meaning and scope of disparagement *vis-à-vis* comparative advertisement in India.

A. Comparative Advertisement, Puffery and Disparagement

12. Since time immemorial, advertisements have been a tool in the hands of manufacturers and service providers, used as a medium to take their goods and services to the masses and making themselves known. It is also a source of information in the form of public notice. The methods and manners of advertising are ever-evolving, in tandem with technological advancement and increasing industrial competition. From hand-written scribbles on paper scrolls, advertisements have changed forms, morphing into Artificial-Intelligence (AI) generated animations on electronic screens.

13. In a competitive market space, advertising assumes even more importance, with companies engaging in comparative advertising in order to

capture higher market share. The intention behind comparative advertising is simple, to advocate superiority of one's goods or services over one's competitors and to influence the preference of the public. An instance of permissible comparative advertising would be where the advertiser aims to highlight the differences between its product/service and that of its competitor in a manner which does not portray its competitor's product/service in a bad or negative light.

14. The Trade Marks Act, 1999 also recognizes and permits comparative advertising, though not in express terms. The relevant provisions of the Trade Marks Act, 1999 are as under:

> *"**29. Infringement of registered trade marks.**—*
>
> *xxx xxx xxx*
>
> *(7) **A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for** labelling or packaging goods, as a business paper, or for **advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee**.*
>
> *(8) **A registered trade mark is infringed by any advertising of that trade mark if such advertising—***
>
> ***(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or***
>
> ***(b) is detrimental to its distinctive character; or***
>
> ***(c) is against the reputation of the trade mark**.*
>
> *(9) **Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation** and reference in this section to the use of a mark shall be construed accordingly.*
>
> ***30. Limits on effect of registered trade mark.—**(1) Nothing in section 29 shall be construed as preventing the use of a registered trade mark by any person for the purposes of identifying goods or services as those of the proprietor provided **the use**—*
>
> ***(a) is in accordance with honest practices in industrial or commercial matters, and***

(b) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.

xxx xxx xxx"

(Emphasis Supplied)

15. This Court also takes note of the 'Code for Self-Regulation of Advertising Content in India' ("the Advertising Code") issued by the Advertising Standards Council of India ("ASCI"). Though not binding, the said Advertising Code gives a useful input as to the content of advertisements. Clauses 1.1 and 1.4 of the Advertising Code read as under:

"xxx xxx xxx

1.1 Advertisements must be truthful. All descriptions, claims and comparisons, which relate to matters of objectively ascertainable fact, should be capable of substantiation. *Advertisers and advertising agencies are required to produce such substantiation as and when called upon to do so by The Advertising Standards Council of India.*

xxx xxx xxx

1.4. Advertisements shall neither distort facts nor mislead the consumer by means of implications or omissions. Advertisements shall not contain statements or visual presentation, which directly, or by implication or by omission or by ambiguity or by exaggeration, are likely to mislead the consumer about the product advertised or the advertiser, or about any other product or advertiser.

xxx xxx xxx"

(Emphasis Supplied)

16. Thus, a combined reading of the Trade Marks Act, 1999 and the Advertising Code of ASCI makes it abundantly clear that comparative advertising is permissible and practiced in India. However, relevant safeguards and restrictions have been imposed to regulate such advertising in order to ensure that consumers are protected from misleading advertisements. Therefore, what must always be paramount is the interest of the consumer. There is no restriction on comparative advertising as long as

the use of competitor's mark/goods/service is fair, honest, truthful, and in alignment with the interest of the public.

17. Comparative advertising is also another facet of the right to commercial freedom of speech and expression, which is guaranteed under Article 19(1)(a) of the Constitution of India. The scope of Article 19(1)(a) *vis-à-vis* freedom of commercial speech has been widely discussed by the Courts. Advertising is synonymous with commercial speech. Thus, Courts have concluded that as commercial speech involves both, the advertiser's right to disseminate information and the public's right to receive the same, it is an essential aspect of freedom of speech and expression under Article 19(1)(a).

18. Having noted that, it is to be kept in mind that Article 19(1)(a) does not permit dissemination of falsity or the right to defame, disparage or denigrate any competitor. Like any fundamental right guaranteed under Article 19 of the Constitution, commercial freedom of speech too is subject to reasonable restrictions under Article 19(2). As public interest is supreme, comparative advertising can be subject to regulation under Article 19(2) if such advertising is misleading, unfair or untruthful.

19. What needs to be understood next is the constitution of a misleading advertisement. A misleading advertisement is one which confuses the customer and affects their economic behaviour by misrepresenting claims, either with respect to advertiser's own product or that of any competitor's product. When tricky language is used to perpetrate falsity and disguise deception, the consumer is said to be misled. Falsity in regards to misrepresentation is described in *Halsbury's Laws of England, Volume 76, 5th Ed. (2024)* at para 740 as follows:

"xxx xxx xxx

740. What constitutes falsity.

A representation is deemed to have been false, and therefore misrepresentation, if it was at the material date false in substance and in fact. For the purpose of determining whether there has or has not been a misrepresentation at all, the representor's knowledge, belief or other state of mind is immaterial, *save in cases where the representation relates to the representor's state of mind, although their state of mind is of the utmost importance for the purpose of considering whether the misrepresentation was fraudulent.*

xxx xxx xxx"

(Emphasis Supplied)

20. Further, misleading actions and unfair commercial practice in cases of comparative advertising are defined in *Halsbury's Laws of England, Volume 21, 5th Ed. (2022)* at para 425 as under:

"xxx xxx xxx

425. Misleading actions: confusion with competitors and breach of industry codes.

A commercial practice is a 'misleading action' if either:

(1) ***it concerns any marketing of a product (including comparative advertising) which creates confusion with any products****, trade marks, trade names or other distinguishing marks* ***of a competitor****; or*

(2) ***it concerns any failure by a trader to comply with a commitment contained in a code of conduct*** *which the trader has undertaken to comply with,*

and ***it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise,*** *taking account of its factual context and of all its features and circumstances.*

A misleading action is an 'unfair commercial practice', and a trader who engages in a misleading action is guilty of an offence.

xxx xxx xxx"

(Emphasis Supplied)

21. Thus, what comes to the fore are two important factors, i.e., firstly, deception or the likelihood of deception by an advertisement, and secondly, the alteration of consumer's economic transactions as a result of such deceptive and misleading advertisement. One exception to such

deception/misrepresentation is the instance of puffing up of advertiser's own product, also known as 'puffery'. Puffery is practiced by employing hyperbole in order to exaggerate the qualities of goods or service, which is more often than not, false. However, it is now well settled that puffery shall only be used by advertisers in instances wherein it would be clear to the average consumer that the statement made is not to be taken seriously.

22. In cases such as the present, it is the duty of the Court to examine whether the impugned advertisement falls under the realm of puffery, or whether it has transgressed the fine line separating it from disparagement. Disparagement is nothing but the denigration and downgrading of a rival product or service in an advertisement by way of misrepresentation or otherwise, in order to influence the consumer to prefer the advertiser's product over the competitor's product. In general parlance, 'to disparage' means to belittle, to denigrate, to defame, to reproach, or to disgrace. Whereas, the legal definition of disparagement as given in *Black's Law Dictionary, 8th Ed. (2004)*, is as follows:

> *"xxx xxx xxx*
> ***disparagement*** *(di-**spair**-ij-mənt), n.* ***1.*** ***A derogatory comparison of one thing with another****.<the disparagement consisted in comparing the acknowledged liar to a murderer>.* ***2.*** ***The act or an instance of castigating or detracting from the reputation of, esp. unfairly or untruthfully*** *<when she told the press the details of her husband's philandering, her statements amounted to disparagement>.* ***3.*** ***A false and injurious statement that discredits or detracts from the reputation of another's property, product, or business.*** *• To recover in tort for disparagement, the plaintiff must prove that the statement caused a third party to take some action resulting in specific pecuniary loss to the plaintiff. — Also termed* ***injurious falsehood****. —* ***More narrowly termed slander of title; trade libel; slander of goods.*** *See TRADE DISPARAGEMENT. Cf. commercial defamation under DEFAMATION. [Cases: Libel and Slander - 130, 133. C.J.S. Libel and Slander; Injurious Falsehood §§ 204-206, 209.]* ***4.*** *Reproach, disgrace, or indignity <self-importance is a disparagement of*

> *greatness>. **5.** Hist. The act or an instance of pairing an heir in marriage with someone of an interior social rank <the guardian's arranging for the heir's marriage to a chimney sweep amounted to disparagement>. — **disparage,** vb.*
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

23. Thus, any attempt of an advertiser to portray a rival's goods or service in a negative light, by either making false statements or using ambiguous or deceptive visual and audio aids, will constitute disparagement. Negative insinuation campaigns in the name of advertising are impermissible as they go against the best interest of the public at large. In case of disparagement, a number of factors, including, the intent, manner, storyline, mode, use of celebrities as endorsers, etc., have to be looked into, in order to determine the capacity and degree of deception. Advertisements cannot urge people not to buy a certain product as the same constitutes disparagement. Therefore, any representation by an advertiser which contravenes the requirements of professional diligence and is likely to materially distort economic behaviour of the average consumer with regard to the product is disparagement.

24. Furthermore, the nature of goods and services also affects the degree of hyperbole which can be employed by advertisers. For example, in case of a toilet cleaner or a liquid handwash, the degree of falsity in puffery would be higher in comparison to what shall be tolerable when marketing a medicine or a drug. The threshold at which Courts analyze misrepresentation in commercial practice has to be much higher and stricter when the product being advertised is capable of having a detrimental impact on the health of the consumer.

25. Keeping the aforesaid discussion in mind, this Court shall now proceed to discuss the law of disparagement in respect of goods falling under the purview of the Drugs and Cosmetics Act.

B. ***Test of disparagement in the context of Drugs and Cosmetics Act and the Rules framed thereunder***

26. Drugs and Cosmetics Act is a pre-Constitutional Act, based upon the recommendations of a Drug Enquiry Committee under the chairmanship of Lt.-Col. R.N. Chopra. The Chopra Committee had been set-up in the year 1931 to make recommendations regarding the method and means of controlling production as well as sale of drugs and pharmaceuticals in India. The Drugs and Cosmetics Act was essentially formulated to prevent sub-standards in drugs and medicinal preparations to ensure public interest, as is evident from the preamble of the Act itself, which reads as under:

> *"xxx xxx xxx*
>
> *An Act to regulate the import, manufacture, distribution and sale of drugs and cosmetics.*
>
> *xxx xxx xxx"*

Apart from regulating the sale and import of drugs, the Drugs and Cosmetics Act also stipulates the compliances in respect of maintaining the standard and quality of drugs. Any deviance from compliances in the manner of misbranding, adulteration, etc., has penal consequences.

27. The drugs sought to be regulated under the Drugs and Cosmetics Act, also include ASU drugs. ASU drugs, as defined under Drugs and Cosmetics Act, are preparations whose formulations find their origin in any of the authoritative texts mentioned in the First Schedule of the Drugs and

Cosmetics Act. The official website of Ministry of AYUSH, Government of India[1] describes Ayurveda as:

> *"xxx xxx xxx*
>
> *Ayurveda is a time-honored traditional system of medicine in India, which elucidates the origins of various ailments, imparts knowledge of life, and advocates the enhancement of physical, mental, and spiritual well-being. It is regarded as the fifth Veda, believed to be an upaveda of Atharvaveda. Numerous references to health, diseases, and their treatments, including the use of non-materialistic approaches like sunrays, fasting, mantras, etc., can be found in these Vedas. The comprehensive documentation of Ayurvedic knowledge can be traced back to texts such as 'Brahma Samhita,' 'Ágniveshatantra,' 'Susrut Samhita,' 'Bhela Samhita,' among others.*
> *According to Ayurveda, good health is considered fundamental for achieving life's goals - Dharma (duties), Arth (finance), Kama (materialistic desires), and Moksha (salvation). Ayurveda emphasizes the significance of Tri-danda, a conscious combination of Satva (mind), Atma (real self), and Shareer (the body), which is essential for human existence, similar to how a tripod supports a table. This integrated approach has been instrumental in the enduring appeal of Ayurveda across the ages.*
>
> *xxx xxx xxx"*

28. The regulatory framework of ayurvedic medicines, including, with respect to their misbranding and adulteration, is modelled on the same lines as that of allopathic medicines. Manufacturing of ayurvedic medicines requires license from the concerned State Government as well as compliance of standards prescribed in the Ayurvedic Pharmacopoeia. Statutory bodies, namely the Ayurveda, Siddha, Unani Drugs Technical Advisory Board (ASUDTAB) and Ayurveda, Siddha, Unani Drugs Consultative Committee (ASUDCC) have been set-up under the Drugs and Cosmetics Act and are especially dedicated to ayurvedic medicines, their regulation and enforcement.

[1] ***Website URL: - https://ayush.gov.in/#!/Ayurveda***

29. Relevant provisions of the Drugs and Cosmetics Act and the Drug Rules framed thereunder are reproduced below for the sake of convenience:

The Drugs and Cosmetics Act, 1940

"xxx xxx xxx

3. Definitions

In this Act, unless there is anything repugnant in the subject or context,—

(a) "Ayurvedic, Siddha or Unani drug" includes all medicines intended for internal or external use for or in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, and manufactured exclusively in accordance with the formulae described in, the authoritative books of Ayurvedic, Siddha and Unani Tibb systems of medicine, specified in the First Schedule;*"*

xxx xxx xxx

33E. Misbranded drugs

For the purposes of this Chapter, an Ayurvedic, Siddha or Unani drug shall be deemed to be misbranded, *—*

(a) if it is so coloured, coated, powdered or polished that damage is concealed, or if it is made to appear of better or greater therapeutic value than it really is; or

(b) if it is not labelled in the prescribed manner; or

(c) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular.

xxx xxx xxx"

(Emphasis Supplied)

The Drug Rules, 1945

"xxx xxx xxx

157. Conditions for the grant of a licence in Form 25-D

...

(1B) No manufacturer shall use any prefix or suffix with the name of any Ayurvedic, Siddha or Unani Tibb drug falling under clause (a) of section 3 of the Act, except as described in the authoritative books specified in the First Schedule to the Act:

PROVIDED that a formulation without any specific name, described in the authoritative books may be named on the basis of the ingredients of that formulation.

xxx xxx xxx

161. Labelling, packing and limit of alcohol

…

(3) Subject to the other provisions of these rules, the ***following particulars shall be either printed or written in indelible ink and shall appear in a conspicuous manner on the label of the innermost container of any Ayurvedic (including Siddha) or Unani drug and Patent or Proprietary Ayurveda, Siddha or Unani drugs and on any other covering in which the container is packed, namely****:—*

(i) ***The name of the drug. For Ayurveda, Siddha or Unani Drug purpose the name shall be the same as mentioned in the authoritative books included in the First Schedule of the Act.***

xxx xxx xxx"

(Emphasis Supplied)

30. Thus, what comes to light from the aforenoted discussion is that ayurvedic medicines and their production, manufacturing, sale as well as their branding and marketing are statutorily regulated in India. Therefore, as a natural corollary, any marketing of an ASU drug covered under the First Schedule of the Drugs and Cosmetics Act, whether in the form of an advertisement, or otherwise, apart from ensuring compliance with advertising and commercial practice laws, must be in strict compliance of the said Act and its Rules.

31. This Court further takes note of a notification dated 19th January, 2021, placed on record before this Court, issued by Ministry of AYUSH, Government of India in light of rising cases of misleading advertisements and representations in regards to ASU drugs. The said notification reads as under:

"T-11012/11/2020-DCC
Government of India
Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy
(AYUSH)

NBCC Office Block-3, 2nd Floor
East Kidwai Nagar, New Delhi- 110023

Dated: 19.01.2021.

Advisory

Subject: Prohibition of misleading advertisement and c1assical/Shastriye Ayurvedic, Siddha and Unani (ASU) drugs- reg.

Whereas Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 and Drugs & Cosmetics Rules, 1945 have prescribed provisions for prohibition of misleading advertisements and claims of ASU drugs along with penalty provisions for the defaulters;

Whereas ASU drugs defined under Section 3(a) of the Drugs & Cosmetics Act, 1940 are manufactured for sale under license in accordance with the formulae described in the authoritative books specified in the First Schedule to the Act and are widely consumed by the public due to their tradition of use and time-tested effectiveness*;*

Recently certain instances of ambiguous statements and unfounded claims to denigrate classical/shastriye ASU drugs have been brought to the notice of Central Government, which tantamount to be misleading to the public and appear to be in contravention of the legal provisions for prohibition of advertisement of drugs as well as desist public from consuming such ASU formulations*;*

In view of the above, ***all the ASU drug manufacturers in the country are hereby advised not to make and publicize any inappropriate statement or misleading claim against classical/shastriye ASU drug*** *and the State/UT Licensing Authorities/Drug Controllers may take necessary action on the instance of denigrating classical ASU formulation in terms of its name and use amounted to misleading in nature under the provisions of Drugs and Magic Remedies Act (Objectionable Advertisement), Act, 1954 and Drugs & Cosmetics Rules, 1945.*

xxx xxx xxx"

(Emphasis Supplied)

32. Thus, it is manifest that lower threshold for tolerance of untruthfulness is the norm in the law relating to disparagement and degree of comparative advertising permissible in the context of medicinal preparations, especially, regulated drugs, including ASU drugs. The law of disparagement as it stands today is well-settled. However, what emerges from the combined reading of the Trade Marks Act, 1999, the Advertising Code of ASCI, the Drugs and Cosmetics Act & Rules, and the notification dated 19th January, 2021 of the AYUSH Ministry, is that the test of disparagement and misrepresentation in the context of regulated drugs must

be measured on a separate and stricter scale. The examination of the likelihood of deception and level of untruthfulness has to be more stringent in order to safeguard the interest of the public at large. Advertisers cannot be permitted to exploit their right to commercial freedom of speech by resorting to false, baseless and untruthful representations in the context of medicinal preparations and drugs. What might be permitted by way of comparison or puffery in case of a toilet cleaner might not be permissible when the product involved is a regulated drug. The consumer must not be misled to believe in false efficacy or superiority of a regulated drug in the name of commercial freedom of speech, especially, if the drug or medicinal preparation in question is known to be widely consumed and such misrepresentation is made with the knowledge of its capacity of confusion and alteration of financial transactional behaviour of consumer in respect of such drug or medicine.

C. Analysis of merits of the case

33. This Court now proceeds to examine the merits of the contentions raised by both the parties on the anvil of the findings noted above and in the backdrop of the relevant law, as discussed hereinabove.

34. The plaintiff is aggrieved by the impugned TVC and Print Advertisements inasmuch as they seek to convey to the public at large that firstly, defendants' product is superior/better than all other Chyawanprash in the market because the other Chyawanprash, and specifically, 'Dabur Chyawanprash', contain only 40 herbs and are ordinary, i.e., are not good enough. Secondly, it is plaintiff's case that the defendants are making false and misleading statements regarding a classical ayurvedic drug/medicine. A

summary of plaintiff's submissions, relevant for the present discussion, is as under:

- Defendants cannot be permitted to say that only they have the requisite knowledge of the Vedas to prepare Chyawanprash as it is an ASU drug, regulated under the Drugs and Cosmetics Act and prepared strictly in accordance with specific formulations/ingredients as per authoritative texts mentioned in First Schedule of the Drugs and Cosmetics Act. Thus, impugned TVC is an instance of generic disparagement against all Chyawanprash in the market.
- The defendants have specifically identified, disparaged and denigrated plaintiff's Dabur Chyawanprash in their Print Advertisements by specifically mentioning '40 herbs' as it is a known fact that the plaintiff advertises its product as having 40+ herbs. Moreover, plaintiff has over 61.60% market share and is the market leader in Chyawanprash product category, therefore, any comparison being made would make the consumer immediately connect it to plaintiff's product.
- Use of the word 'ordinary' in relation to plaintiff's Chyawanprash and other Chyawanprash in general, while labelling Patanjali Chyawanprash as 'special', is derogatory and disparaging as it seeks to show plaintiff's Chyawanprash as inferior.

35. On the contrary, the defendants' relevant submissions are condensed as follows:

- There is no mention or identification of plaintiff's product or any other Chyawanprash product in the impugned TVC or Print

Advertisements as no verbal or visual reference has been made to any other brand of Chyawanprash.

- Comparative advertisement is permissible under the applicable laws. Further, Article 19(1)(a) of the Constitution of India guarantees commercial freedom of speech, whereby, certain degree of creative freedom can be exercised in advertising. Certain amount of implied disparagement is inherent in commercial advertising.
- Use of 'ordinary' is only to highlight defendants' product as a healthier alternative with more ingredients and not to disparage or denigrate other Chyawanprash products.
- Impugned advertisements are instances of puffery wherein the additional positive attributes of defendants' product are being highlighted and consumers are encouraged to opt for the same. It is settled law that puffery is not actionable and does not amount to disparagement.
- No relief which is itself in the nature of a final relief can be granted at the interim stage and therefore, plaintiff is not entitled to any interim relief as the prayers sought in *I.A. 49744/2024* and *I.A. 419/2025* are identical to the prayer in the plaint.

36. The impugned TVC labels 'Patanjali Special Chyawanprash' as original as it is prepared by defendants, who possess the true knowledge of the ayurvedic texts and prepare the Chyawanprash in accordance with those texts and traditions of the great sages. The impugned TVC further seeks to convey that the manufacturers of other Chyawanprash in the market, i.e., the competitors of defendants, do not have the requisite traditional knowledge as

they do not "truly follow" the tradition/method as prescribed by the ayurvedic texts.

37. Therefore, what seems to fall from the bare reading and audio-visual viewing of the impugned TVC is that other existing Chyawanprash in the market are ordinary and consumers ought not to settle for ordinary products, which are not prepared in accordance with ayurvedic knowledge as they are not manufactured as per ancient ayurvedic texts and tradition. This Court further notes that the impugned TVC is narrated by Mr. Ramdev, who also appears in the TVC in person. Mr. Ramdev is a known yoga guru in India and is recognized as someone having knowledge of the Vedas. Thus, the narrative of the impugned TVC assumes more importance coming from the mouth of a person popularly known to be an expert in the field.

38. The said statement in the impugned TVC, in addition to being false, is also misleading for the reason that the impression created by the defendants, with Mr. Ramdev as the brand ambassador, is that only the defendants have the knowledge of Ayurveda and Vedas, and can make original Chyawanprash, as per the traditions. Whereas, fact of the matter is that Chyawanprash is an ayurvedic medicine as defined under Section 3(a) of the Drugs and Cosmetics Act, as noted above. As per Section 3(a) of the Drugs and Cosmetics Act, an ayurvedic drug includes all medicines intended for internal or external use, which are manufactured in accordance with the formulae described in the authoritative books of ayurvedic systems of medicine, as specified in First Schedule. Thus, as per the definition of an ASU drug under Section 3(a) of the Drugs and Cosmetics Act, there is no mandate/requirement for a manufacturer to first have "knowledge" of Ayurveda and Vedas to make Chyawanprash. A manufacturer can make

Chyawanprash by following the recipe/formulae, as prescribed in any of the authoritative text listed in Schedule I.

39. Thus, as per the long-established law of disparagement, while it may be open for the defendants to state that 'Patanjali Special Chyawanprash' is the best, it is not open for them to state that other manufacturers of Chyawanprash lack the necessary knowledge and technical know-how to prepare the same as per ayurvedic texts as the same is firstly, untrue and secondly, misleading to the public at large.

40. Further, the aforenoted impugned Print Advertisements of the defendants start with the slogan, *'Why settle for ordinary Chyawanprash made with 40 herbs?'*. The said advertisement then goes on to claim that Patanjali truly follows the tradition established by great sages Sushrut, Charak and Chyawan. The impugned Print Advertisements again seem to convey an overall message to the consumers that only Patanjali Chyawanprash is 'special' and manufacturers of other Chyawanprash do not 'truly follow' the tradition/method or the ayurvedic texts. Furthermore, it is conveyed that the composition of 'Patanjali Special Chyawanprash' contains 51 precious herbs and saffron, and truly follows the tradition established by the great sages of Ayurveda.

41. It is the case of the plaintiff that the reference to 'ordinary Chyawanprash made with 40 herbs' refers to the plaintiff's product, i.e., 'Dabur Chyawanprash', since the plaintiff advertises its product as Chyawanprash with 40+ ayurvedic ingredients. The advertisements of the plaintiff for 'Dabur Chyawanprash', with specific statement that the same contains 40+ ayurvedic ingredients, as per the record, are reproduced as under:

42. It is to be noted that the product of the plaintiff has repeatedly and continuously been advertised as having 40+ ayurvedic herbs, as reproduced above. Thus, when the impugned Print Advertisements make the statement that the defendants' 'Patanjali Special Chyawanprash' is made of 51 precious ayurvedic herbs (*Jadi Bootiyan*), hence, it is 'original', in

comparison with the Chyawanprash containing 40 ayurvedic herbs, which are ordinary, the reference is evidently targeted towards the plaintiff's product. Hence, on one hand, while a positive statement has been made that 'Patanjali Special Chyawanprash' is in accordance with ancient ayurvedic texts, on the other hand, in comparison, plaintiff's product, i.e., 'Dabur Chyawanprash', containing only 40 herbs, is shown in a negative light as being ordinary, and not in accordance with the ancient ayurvedic texts.

43. The defendants have used the prefix 'ordinary' in respect of other Chyawanprash, while comparing 'Patanjali Special Chyawanprash' with other Chyawanprash in the market. While it has been held by Courts that comparison with 'ordinary' products may not amount to disparagement in the context of comparison of attributes/benefits of two sets of products. However, in the context of Chyawanprash, being an ASU drug/medicine, there cannot be a comparison between 'ordinary' Chyawanprash and 'Patanjali Special Chyawanprash'. As noted above, Chyawanprash is a classical ayurvedic drug/medicine as defined under Section 3(a) of the Drugs and Cosmetics Act, and it must be prepared strictly in accordance with the ingredients and the formulation, as listed in one of the ayurvedic texts, listed in the First Schedule of the Drugs and Cosmetics Act. Hence, all products made in accordance with the Drugs and Cosmetics Act, are classical ayurvedic medicine, including, Chyawanprash. Therefore, there cannot be 'ordinary' Chyawanprash and to claim these are two classes of Chyawanprash, i.e., 'ordinary', which are deficient in ingredients, and 'special', which has extra herbs, amounts to disparaging the entire class of Chyawanprash.

44. It is to be noted that Schedule I of the Drugs and Cosmetics Act

contains the names of the authoritative books containing the formulae in accordance with which the ASU drugs are to be manufactured. The same is reproduced as under:

[329][THE FIRST SCHEDULE

[*See* Section 3(*a*)]

A.—[330][AYURVEDIC AND SIDDHA SYSTEMS]

Serial No.	***Name of Book***
	Ayurveda
1	Arogya Kalpadruma
2	Arka Prakasha
3	Arya Bhishak
4	Ashtanga Hridaya
5	Ashtanga Samgraha
6	Ayurveda Kalpadruma
7	Ayurveda Prakasha
8	Ayurveda Samgraha
9	Bhaishajya Ratnavali
10	Bharat Bhaishajya Ratnakara
11	Bhava Prakasha
12	Brihat Nighantu Ratnakara
13	Charaka Samhita
14	Chakra Datta
15	Gada Nigraha
16	Kupi Pakva Rasayana
17	Nighantu Ratnakara
18	Rasa Chandanshu
19	Rasa Raja Sundara
20	Rasaratna Samuchaya
21	[331][Rasatantra Sara Va Siddha Prayoga Sangraha—Part I]
[332][21(*a*)	Rastantra Sar Va Siddha Prayog Samgraha Part II (Edition 2006)]
22	Rasa Tarangini
23	Rasa Yoga Sagara
24	Rasa Yoga Ratnakara
25	Rasa Yoga Samgraha
26	Rasendra Sara Samgraha
27	Rasa Pradipika
28	Sahasrayoga
29	Sarvaroga Chikitsa Ratnam
30	Sarvayoga Chikitsa Ratnam
31	Sharangadhara Samhita
32	Siddha Bhaishajya Manimala
33	Siddha Yoga Samgraha
34	Sushruta Samhita
35	Vaidya Chintamani
36	Vaidyaka Shabda Sindu
37	Vaidyaka Chikitsa Sara
38	Vaidya Jiwan
39	Basava Rajeeyam
40	Yoga Ratnakara
41	Yoga Tarangini
42	Yoga Chintamani
43	Kashyapasamhita
44	Bhelasamhita
45	Vishwanathachikitsa
46	Vrindachikitsa
47	Ayurvedachintamani
48	Abhinavachintamani
49	Ayurveda-ratnakar
50	Yogaratnasangraha

51	Rasamrita
52	Dravyagunanighantu
53	Rasamanjari
54	Bangasena
[333][54-A	Ayurvedic Formulary of India and its Parts]
54-B	Ayurveda Sara Samgraha]
[334][54-C	Ayurvedic Pharmacopoeia of India]
[335][54-D	Ayurvedic Pharmacopoeia of India and its Parts]
	Siddha
55	Siddha Vaidya Thirattu
56	Therayar Maha Karisal
57	Brahma Muni Karukkadai (300)
58	Bhogar (700)
59	Pulippani (500)
60	Agasthiyar Paripuranam (400)
61	Therayar Yamagam
62	Agasthiyar Chenduram (300)
63	Agasthiyar (500)
64	Athmarakshamrutham
65	Agasthiyar Pin (80)
66	Agasthiyar Rathna Churukkam
67	Therayar Karisal (300)
68	Veeramamuni Nasa Kandam
69	Agasthiyar (600)
70	Agasthiyar Kanma Soothiram
71	18 Siddhar's Chillari Kovai
72	Yogi Vatha Kaviyam
73	Therayar Tharu
74	Agasthiyar Vaidya Kaviyam (1500)
75	Bala Vagadam
76	Chimittu Rathna (Rathna) Churukkam
77	Nagamuni (200)
78	Agasthiyar Chillari Kovai
79	Chikicha Rathna Deepam
80	Agasthiyar Nayana Vidhi
81	Yugi Karisal (151)
82	Agasthiyar Vallathi (600)

45. While the plaintiff is stated to be following the Ayurveda books as mentioned at serial no. 21 and 21(a) of the Schedule I, the defendants are stated to be following the Ayurveda book listed at serial no. 54-B of the First Schedule. Thus, when a drug, in the present case, Chyawanprash, is manufactured in terms of the ayurvedic texts, as enlisted in the Drugs and Cosmetics Act, the same would be authentic, and reference to the Chyawanprash as 'ordinary', would be disparaging. The same would also be a false and misleading statement in the context of the comparison of 51

ingredients with 40 herbs.

46. As per the *Cambridge International Dictionary of English* published by the Cambridge University Press, 'ordinary' means "not different, special or unexpected in any way; usual". It is also taken to be used in a negative way to mean somewhat inferior and below average. Referring to other Chyawanprash as 'ordinary' would denote and give an impression that they are inferior, especially, in the context of untrue claim that all other manufacturers have no knowledge of ayurvedic texts and knowledge of formulae to prepare Chyawanprash. This Court, in the case of ***Dabur India Limited Versus Colgate Palmolive India Ltd.***[2], wherein the defendant's application to modify its impugned advertisement and replace the phrase '*Lal Dant Manjan* Powder' (red tooth powder) with '*Sadharan Dant Manjan* Powder' (ordinary tooth powder) was rejected, has held as under:

> *"xxx xxx xxx*
>
> ***5.*** *Thus the Division Bench of this Court in Pepsi Co. Inc. v. Hindustan Coca Cola Ltd;, 2003 (27) PTC 305 (Delhi), and two orders of the learned Single Judge held that* ***rival product cannot be disparaged. It has also been held that the generic disparagement of a class or genre of the product is not permissible. Considering the fact that in the proposed advertisement suggested by the defendant in the present application the word 'Lal' qualifying Dant Manjan has been removed yet the harmful affect of Dant Manjan in general amplified in the proposed advertisement by calling it 'sadharan' dant manjan which is (khurdara) abrasive on the teeth still falls within the prohibition of generic disparagement*** *proscribed by the judgment of this Court dated 9th September, 2004 and in this form is not permissible. Accordingly, this application is dismissed.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

47. Thus, use of the word 'ordinary' in the present context would lead an average consumer to infer that the other Chyawanprash are either fake,

[2] ***2004 SCC OnLine Del 1082***

inferior, or spurious, as compared to the Chyawanprash of the defendants, which has been prepared by truly following the ayurvedic traditions. This is undoubtedly a false statement, when Chyawanprash made by the plaintiff and other manufacturers is also in accordance with the textbooks enlisted as per the Drugs and Cosmetics Act.

48. Holding that the essential message conveyed by the advertisement must be truthful, and where the reputation of the products/services of another person is at stake, the truthfulness of the essential message should be strictly tested, a Division Bench of this Court in the case of ***Colgate Palmolive Company and Anr. Versus Hindustan Unilever Ltd.***[3]**,** has held as follows:

> *"xxx xxx xxx*
>
> *49.* ***If one considers the question, what is the message that is conveyed by the impugned TVC, we have little doubt that any reasonable person who views the impugned TVC would receive the message that Pepsodent GSP is 130% more effective than Colgate ST insofar as combating cavities is concerned.*** *Certain consumers who are not aware of the appellants products in premium segment are also likely to conclude that Pepsodent GSP is better than the Colgate toothpastes in view of the voice-over at the end of the impugned TVC. The entire theme of the impugned TVC is conduct of a cavity test (the expression "preventive" only appears, in a smaller font size, on the banner at the commencement of the impugned TVC and is not referred to thereafter). While the Pepsodent child clears the test with flying colours apparently the Colgate child does not fare that well. Any reasonable person viewing this advertisement would take with him the message that Pepsodent GSP is significantly better in combating tooth decay and oral germs/bacteria than Colgate/Colgate ST. A scientific basis is sought to be supplied for the expression "130% better", thus this cannot be ignored as hyperbole.* ***The erroneous usage of percentage as a measure may be ignored but the statement that Pepsodent is better that Colgate in respect of combating cavity causing germs is, undoubtedly, a statement of fact. The message that Pepsodent GSP is better than Colgate ST in combating tooth decay (cavities) is the message that the impugned TVC delivers and this is***

[3] ***2013 SCC OnLine Del 4986***

a serious representation of fact. Thus, the question that requires to be addressed is whether this claim by the respondent is truthful or not.

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.*** *To illustrate this point, let us take a hypothetical case of comparison between two motor vehicle manufacturers. While one manufacturer may use an engine of a higher cubic capacity, the other manufacturer, while using an engine of a lower capacity may tune it differently and employ a better fuel injection system which, in fact, leads to delivering more power to the wheels in comparison to the vehicle employing the larger capacity engine. While it would be appropriate for the car manufacturer using a larger engine to put out a comparative advertisement indicating that the engine used in vehicles manufactured by him were of a higher capacity than the engine used by other car manufacturer, it would be completely misleading if the former car manufacturer would on the basis of a higher capacity engine proclaim that the vehicles manufactured by him were more powerful and faster than that of his competitor.* ***The essential message conveyed by the advertisement must be truthful and given the fact that in a case of comparative advertisement where the reputation of the products/services of another dealer/person is at stake, the truthfulness of the essential message should be strictly tested.***

51. ***In the case of Lakhanpal National Ltd. v. M.R.T.P. Commission : (1989) 3 SCC 251, the Supreme Court explained that an advertisement may contain inaccurate facts yet convey an***

essentially truthful message. On the other hand, an advertisement may be entirely accurate on facts but convey a completely misleading message. *In that case, advertisements were issued by a dry cell battery manufacturer who was manufacturing and dealing in power cells under the brand name "Novino". The advertisements announced that Novino batteries were manufactured in collaboration with National Panasonic of Japan using National Panasonic techniques. In fact, there is no company known as National or Panasonic. The same were brands names of Mitsushita Electric Industrial Co. Ltd. Technically viewed, the advertisement contained inaccurate facts, however, the Supreme Court held that viewed from the perspective of the message that was being communicated, the same could not be held to be untrue. This was explained by the Supreme Court in the context of unfair trade practice as under : -*

> *"7. However, the question in controversy has to be answered by construing the relevant provisions of the Act. The definition of "unfair trade practice" in Section 36-A mentioned above is not inclusive or flexible, but specific and limited in its contents.* ***The object is to bring honesty and truth in the relationship between the manufacturer and the consumer. When a problem arises as to whether a particular act can be condemned as an unfair trade practice or not, the key to the solution would be to examine whether it contains a false statement and is misleading and further what is the effect of such a representation made by the manufacturer on the common man? Does it lead a reasonable person in the position of a buyer to a wrong conclusion? The issue cannot be resolved by merely examining whether the representation is correct or incorrect in the literal sense. A representation containing a statement apparently correct in the technical sense may have the effect of misleading the buyer by using tricky language. Similarly a statement, which may be inaccurate in the technical literal sense can convey the truth and sometimes more effectively than a literally correct statement. It is, therefore, necessary to examine whether the representation, complained of, contains the element of misleading the buyer. Does a reasonable man on reading the advertisement form a belief different from what the truth is? The position will have to be viewed with objectivity, in an impersonal manner. It is stated in Halsbury's Laws of England (4th Edn., paras 1044 and 1045) that a representation will be deemed to be false if it is false in substance and in fact; and the test by which the representation is to be judged is to see whether the discrepancy between the fact as represented and the actual fact is such as would be considered material by a reasonable***

> ***representee. "Another way of stating the rule is to say that substantial falsity is, on the one hand, necessary, and, on the other, adequate, to establish a misrepresentation" and "that where the entire representation is a faithful picture or transcript of the essential facts, no falsity is established, even though there may have been any number of inaccuracies in unimportant details. Conversely, if the general impression conveyed is false, the most punctilious and scrupulous accuracy in immaterial minutiae will not render the representation true";*** *Let us examine the relevant facts of this case in this background."*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

49. Recently, this Court, in the case of ***Hindustan Unilever Limited Versus RSPL Limited***[4], while adjudicating an interim injunction application, restrained the defendant from airing its impugned television commercial in respect of its '*Ghadi'* detergent due to easy identification of plaintiff's product, i.e., 'Surf Excel Easy Wash' and the negative comparison between the two rival products, has held as under:

> *"xxx xxx xxx*
>
> *32. This Court is currently hearing this matter in the Vacation Bench. The Court has viewed the four commercials against which the interim injunction is being sought. The settled legal position in this regard has been considered and decided in various decisions of this Court passed by the Co-ordinate Benches as also Division Benches. The said legal position can be summarised as under in simple terms:*
>
> ***(i) That it is permissible for an advertiser to undertake an advertising campaign to promote its own product so long as the same is not deliberately tarnishing or defaming the competitor's product; and***
>
> ***(ii) There ought to be no derogatory remarks made against any competitor's product.***
>
> ***(iii) While puffing is permissible, defamation and tarnishment is not.***
>
> *33. After applying these principles,* ***the Court is of the prima facie opinion that the manner in which the advertisements themselves flow, from a lay persons point of view, clearly the reference that is being made to the competitor's product by the Defendant could be taken to be 'Surf Excel' i.e. product of the Plaintiff.***

[4] ***2025 SCC OnLine Del 4569***

*34. Under such circumstances, **<u>though comparative advertising by itself could be healthy, remarks that are derogatory and defamatory, would not be permissible and therefore, as an ad-interim arrangement, this Court is prima facie inclined to direct the Defendant to remove the following phrases which are clearly derogatory and make negative innuendos qua the Plaintiff's 'Surf Excel' product, from the impugned advertisements:</u>***

- *'Aapka kare badi badi baatein par dho nahi paate'*
  ['Your product makes tall claims but cannot wash']
- *'Iske jhaag acche hai, daam acche hai'*
  ['Its foam is good, price is good'- Expressions which clearly refers to the Plaintiff's product prima facie and appear to be derived from the 'Daag ache hai' campaign of the Plaintiff]
- *'Na Na, yeh dhoka hai'*
  ['No, No, this is a fraud (product)']

xxx xxx xxx"

(Emphasis Supplied)

50. In the context of comparative advertising, the established legal position is that an advertisement must not be false, misleading, unfair or deceptive, irrespective of whether it is extolling the advertised product or criticizing its rival. Misrepresentation and untruth in advertisements is impermissible. An advertisement has necessarily to be honest, meaning thereby, that an advertisement cannot convey an overall misleading message, seen from the stand point of the customer. Extolling of one's positive feature is permissible and some element of hyperbole and untruth has been accepted to be inherent in puffery. However, denigration of a competitor's product is completely impermissible. In comparative advertising, it is permissible to state that the advertised product is superior to the competitor's. However, it is not permissible to attribute this superiority to some failing or fault in the product of the competitor. The delicate distinction between stating one's goods to be superior to the others and the others' goods to be inferior to one's own has to be adhered to. What matters is the impression that the advertisement or commercial, registers in the

viewer's mind. ***(See: Reckitt Benckiser (India) Pvt. Limited and Another Versus Wipro Enterprises (P) Limited.[5])***

51. Holding that in a comparative advertisement, it is open for an advertiser to embellish the qualities of its product, but it is not open for it to claim that the goods of its competitors are bad, undesirable or inferior, a Division Bench of this Court, in the case of ***Reckitt Benckiser (India) Private Limited Versus Hindustan Unilever Limited[6],*** has held as follows:

> *"xxx xxx xxx*
>
> ***24. In a comparative advertisement, it is open for an advertiser to embellish the qualities of its products and its 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.*** *As observed by the Chancery Division in De Beers Abrasive Products Ltd. case[9],* ***it is open for a person to claim that he is the best seller in the world or a best seller in the street but it is not open for him to denigrate the services of another.*** *Thus, it is not open for an advertiser to say "my goods are better than X's, because X's are absolutely rubbish". Puffery and hyperbole to some extent have an element of untruthfulness. If a tailoring shop claims that he provides the best tailored suits in the city, the same may be untruthful. However, it is apparent to anyone who reads or hears this statement that it is puffery. Such statements or taglines are neither held out nor understood as a representation of unimpeachable fact. It is obvious that the person availing services from the tailoring shop, as mentioned above, cannot maintain an action of misrepresentation.* ***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.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

[5] ***2023 SCC OnLine Del 2958 at Para 111***
[6] ***2022 SCC OnLine Del 3094***

52. In similar vein, while holding that comparative advertisements by their very nature and intent include statements which advertise goods of the advertiser as better, however, such statements cannot exceed the permissible limit of puffery, which leads to defamation and disparagement of the competitor's goods, this Court in the aforesaid case of ***Reckitt Benckiser (India) Pvt. Limited and Another Versus Wipro Enterprises (P) Limited (supra)***, has held as follows:

> *"xxx xxx xxx*
>
> ***62.*** *Apropos puffery, this Court further noted, referring to the decisions of the Chancery Division in De Beers Abrasive v. International General Electric Co.[(1975) 2 All ER 599] that* ***puffery, as a matter of pure logic, involved an element of denigration of the rival's goods.*** *The distinction between permissible puffery and impermissible puffery was held to be accurately captured in the following passage from De Beers Abrasive [(1975) 2 All ER 599:*
>
> > ***"Obviously the statement: 'My goods are better than XV is only a more dramatic presentation of what is implicit in the statement:'My goods are the best in the world'. Accordingly, I do not think such a statement would be actionable. At the other end of the scale, if what is said is:'My goods are better than X's, because X's are absolute rubbish', then it is established by dicta of Lord Shand in the House of Lords in White v. Mellin[27], which were accepted by counsel for the Defendants as stating the law, the statement would be actionable.***
>
> ***63.*** *It was further held that* ***puffery and hyperbole, to some extent, involved an element of untruthfulness. However, as they are not intended to be viewed as serious statements of fact, they are permissible. For example, if a tailoring shop claimed to be providing the best tailored suit in the city, though the statement may have been untruthful, it was, obviously puffery and not intended to be taken as a representation of unimpeachable fact. No action for misrepresentation could be founded on the basis of such a statement.***
>
> ***64.*** *The position, however, differed where the statement was not with respect to the advertised goods, but, rather, the goods of a rival. The statement, made by the advertiser, of a competitor's goods were*

entitled to much less latitude. ***Returning to the tailor shop example, this Court held that "whilst it is open that the tailoring shop to state that it provides the best tailored suit in the city; it is not open for it to advertised that the other tailoring shops in the city lacked the necessary skills and their suits are ill-tailored".***

65. *This, it was held that,* ***"in a comparative advertisement, it is open for an advisor to embellish the qualities of its products and its claim, but it is not open for him to claim that the goods of his competitors are bad, undesirable or inferior". Comparative advertisement would always involve a statement that the advertised goods are better, in some aspects, than the goods of the competitors. However, there is a line which an advertiser cannot cross, on the other side of which lie disparagement and defamation of the goods of the competitor.***

66. *It was further held that* ***an advertiser could highlight special features of its product which might be demonstrably better than those of a competitor but the attempt, in such a case, had necessarily to be restricted to highlighting those features, and not to disparaging or denigrating the product of the rival.***

xxx xxx xxx"

(Emphasis Supplied)

53. Delving on the issue of misleading and untruthful speech through the medium of comparative advertisement, which is a form of commercial speech, Supreme Court in the case of ***Tata Press Ltd. Versus Mahanagar Telephone Nigam Limited and Others***[7]**,** has held as follows:

"xxx xxx xxx

17. *Unlike the First Amendment under the United States Constitution, our Constitution itself lays down in Article 19(2) the restrictions which can be imposed on the fundamental right guaranteed under Article 19(1)(a) of the Constitution.* ***The "commercial speech" which is deceptive, unfair, misleading and untruthful would be hit by Article 19(2) of the Constitution and can be regulated/prohibited by the State.***

xxx xxx xxx"

(Emphasis Supplied)

54. Similarly, dealing with the various factors to be considered while determining the issue of disparagement in comparative advertisement, a

[7] ***(1995) 5 SCC 139***

Division Bench of this Court in the case of ***Dabur India Ltd. Versus M/s. Colortek Meghalaya Pvt. Ltd.***[8]**,** has held as follows:

> *"xxx xxx xxx*
>
> ***14.*** *On the basis of the law laid down by the Supreme Court, the guiding principles for us should be the following:—*
>
> *(i) An advertisement is commercial speech and is protected by Article 19(1)(a) of the Constitution.*
>
> *(ii)* ***An advertisement must not be false, misleading, unfair or deceptive.***
>
> *(iii)* ***Of course, there would be some grey areas but these need not necessarily be taken as serious representations of fact but only as glorifying one's product.***
>
> *To this extent, in our opinion, the protection of Article 19(1)(a) of the Constitution is available.* ***However, if an advertisement extends beyond the grey areas and becomes a false, misleading, unfair or deceptive advertisement, it would certainly not have the benefit of any protection.***
>
> ***15.*** *There is one other decision that we think would give some guidance and that is Pepsi Co. Inc. v. Hindustan Coca Cola Ltd., 2003 (27) PTC 305 (Del.) (DB). In this decision, a Division Bench of this Court held that* ***while boasting about one's product is permissible, disparaging a rival product is not.*** *The fourth guiding principle for us, therefore, is: (iv)* ***While glorifying its product, an advertiser may not denigrate or disparage a rival product.*** *Similarly, in* ***Halsbury's Laws of England (Fourth Edition Reissue, Volume 28) it is stated in paragraph 278 that "[It] is actionable when the words go beyond a mere puff and constitute untrue statements of fact about a rival's product.****" This view was followed, amongst others, in* Dabur India *Ltd. v. Wipro Limited, Bangalore, 2006 (32) PTC 677 (Del).* ***"[It] is one thing to say that the defendant's product is better than that of the plaintiff and it is another thing to say that the plaintiff's product is inferior to that of the defendant."***
>
> ***16.*** *In Pepsi Co. it was also held that certain factors have to be kept in mind while deciding the question of disparagement. These factors are: (i) Intent of the commercial, (ii) Manner of the commercial, and (iii) Story line of the commercial and the message sought to be conveyed. While we generally agree with these factors, we would like to amplify or restate them in the following terms: —*
>
> *(1)* ***The intent of the advertisement - this can be understood***

[8] ***2010 SCC OnLine Del 391***

from its story line and the message sought to be conveyed.
(2) The overall effect of the advertisement - does it promote the advertiser's product or does it disparage or denigrate a rival product?

In this context it must be kept in mind that while promoting its product, the advertiser may, while comparing it with a rival or a competing product, make an unfavourable comparison but that might not necessarily affect the story line and message of the advertised product or have that as its overall effect.

(3) ***The manner of advertising - is the comparison by and large truthful or does it falsely denigrate or disparage a rival product? While truthful disparagement is permissible, untruthful disparagement is not permissible.***

17. *In our opinion, it is also important to keep in mind the medium of the advertisement. An advertisement in the electronic media would have a far greater impact than an advertisement in the print media. In D.N. Prasad v. Principal Secretary, 2005 Cri LJ 1901 the Andhra Pradesh High Court observed that* ***a telecast reaches persons of all categories, irrespective of age, literacy and their capacity to understand or withstand. The Court noted that the impact of a telecast on the society is phenomenal.*** *Similarly, it was observed in* ***Pepsi Co.*** *that a* ***vast majority of viewers of commercial advertisements on the electronic media are influenced by visual advertisements "as these have a far reaching influence on the psyche of the people …." Therefore, an advertiser has to virtually walk on a tight rope while telecasting a commercial and repeatedly ask himself the questions: Can the commercial be understood to mean a denigration of the rival product or not? What impact would the commercial have on the mind of a viewer?*** *No clear-cut answer can be given to these questions and it is for this reason that this Court has taken a view that each case has to be decided on its own facts. (See Reckitt Benckiser (India) Ltd. v. Cavinkare Pvt. Ltd., (2007) II Delhi 368, paragraph 17). Consequently, this Court has been called upon to decide the same issue time and time again resulting in the same and very large number of decisions being cited.*

xxx xxx xxx"

(Emphasis Supplied)

55. Considering the aforesaid position of law, the impugned advertisements, which give the overall message that competitors do not have the know-how to manufacture Chyawanprash in accordance with the traditions and ayurvedic texts, and are ordinary, and consumers ought not to

settle for ordinary products, which are not ayurvedic medicines, as they are not manufactured as per ancient ayurvedic texts, are clearly disparaging in nature. In the present case, context of the usage of the phrase 'ordinary Chyawanprash' is clearly negative. Chyawanprash, which is prepared strictly in accordance with the ingredients and formulations listed in any of the ancient ayurvedic texts, as per First Schedule of the Drugs and Cosmetics Act, would be at par and cannot be denigrated as 'ordinary'.

56. The fact that the plaintiff advertises its products as having 40+ ayurvedic herbs, and the impugned Print Advertisements clearly caution consumers not to settle for Chyawanprash which has 40 ayurvedic herbs, is aimed at identifying the plaintiff's product. Hence, there is a positive and unmistakable identification of the plaintiff's product in the impugned Print Advertisements.

57. In this regard, it would be useful to refer to the judgment of this Court in the case of ***Dabur India Limited Versus Colgate Palmolive India Ltd.***[9], wherein, it has been held in categorical terms that generic disparagement of a rival product without specifically identifying or pin pointing the rival product is equally objectionable. Thus, it has been held, as follows:

> *"xxx xxx xxx*
>
> ***19.*** *I am further of the view that* ***generic disparagement of a rival product without specifically identifying or pin pointing the rival product is equally objectionable. Clever advertising can indeed hit a rival product without specifically referring to it. No one can disparage a class or genre of a produce within which a complaining plaintiff falls and raise a defence that the plaintiff has not been specifically identified.*** *In this context the plaintiff has rightly rejected the offer of the defendant to drop the container from its advertisement so as to avoid the averred identification of the plaintiff's product……..*

[9] ***2004 SCC OnLine Del 718***

> ***20.*** *……**Undeniably it is not the puffing up of the defendant's product i.e. the Colgate Tooth powder which can be found objectionable but the running down of a rival product which is the situation in the present case.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

58. Elucidating on the concept of disparagement in advertisements, specifically in instances wherein the particular rival product is not identified and entire class of the product is disparaged in general, this Court in the case of ***Godrej Sara Lee Ltd. Versus Reckitt Benckiser (I) Ltd.***[10]**,** has held as follows:

> *"xxx xxx xxx*
>
> ***13.*** *I may state at the outset that the **cardinal principle is that the advertiser has right to boast of its technological superiority in comparison with product of the competitor. He can declare that his goods are better than that of his competitor. However, while doing so, he cannot disparage the goods of the competitor. Therefore, if the advertising is an insinuating campaign against the competitor's product such a negative campaigning is not permissible. The advertiser, therefore, may highlight the positive features of his product and can even claim that his product is better than his competitors. Such a statement may be untrue. But while doing so, he is not permitted to project that his competitor's goods are bad.** Accepting this cardinal principle, the Calcutta High Court in the case of Reckitt & Colman of India Ltd. v. M.P. Ramchandran (supra) after taking note of some English judgments, culled out the following propositions of law:*
>
> *"(i) A tradesman is entitled to declare his goods to be best in the world, even though the declaration is untrue.*
>
> *(ii) He can also say that his goods are better than his competitors', even though such statement is untrue.*
>
> *(iii) For the purpose of saying that his goods are the best in the world or his goods are better than his competitors' he can even compare the advantages of his goods over the goods of others.*
>
> *(iv) **He, however, cannot, while saying that his goods are better than his competitors', say that his competitors' goods are bad. If he says so, he really slanders the goods of his competitors.***

[10] ***2006 SCC OnLine Del 199***

In other words he defames his competitors and their goods, which is not permissible.

(v) If there is no defamation to the goods or to the manufacture of such goods no action lies, but if there is such defamation an action lies and if an action lies for recovery of damages for defamation, then the Court is also competent to grant an order of injunction restraining repetition of such defamation.

14. *Statement of law in the aforesaid principles is accepted in all the judgments of this Court. In the judgment of this Court in the case of Reckitt & Colman of India Ltd. v. Kiwi T.T.K. Ltd. (supra), the aforesaid principles were specifically restated with approval and the discussion summed up is as under:*

> *"**The settled law on the subject appears to be that a manufacture is entitled to make a statement that his goods are the best and also make some statements for puffing of his goods and the same will not give a cause of action to other traders or manufacturers of similar goods to institute proceedings as there is no disparagement or defamation to the goods of the manufacturer so doing. However, a manufacturers is not entitled to say that his competitor's goods are bad so as to puff and promote his goods.** It, however, appears that if an action lies for defamation an injunction may be granted. It is in this background that I have to see whether there is any disparagement or defamation to the goods of the plaintiff in the advertisement in question."*

xxx xxx xxx

16. *What is disparagement and what would constitute a disparaging message is explained in paras 12 and 13 of the judgment in the following manner:*

> *"What is disparagement. **The New International Webster's Comprehensive Dictionary defines disparage/disparagement to mean, 'to speak of slightingly, under value, to bring discredit or dishonour upon, the act of depreciating, derogation, a condition of low estimation or valuation, a reproach, disgrace, an unjust classing or comparison with that which is of less worth, and degradation.' The Concise Oxford Dictionary defines disparage as under, to bring discredit on, slightingly of and depreciate.**"*

17. *In the electronic media the disparaging message is conveyed to the viewer by repeatedly showing the commercial everyday thereby ensuring that the viewers get clear message as the said commercial leaves an indelible impression in their mind. To decide the question of disparagement we have to keep the following factors in mind namely (1) Intent of commercial, (ii) Manner of the commercial, (iii) Story*

line of the commercial and the message sought to be conveyed by the commercial. ***Out of the above, 'manner of the commercial' is very important. If the manner is ridiculing or the condemning product of the competitor then it amounts to disparaging but if the manner is only to shown one's product better or best without derogating other's product than that is not actionable."***

18. *The highlight of Dabur India Limited (supra) is that* ***even when a particular product of the competitor is not disparaged but some generic product is denigrated, even that would be disparaging.*** *That was a case where infringing advertisement depicted that Chayawanprash is not be taken in the summer months and instead Amritprash is the substitute for it. It was a verbal assertion in the advertisement by the actor without pointing out at the product of the plaintiff specifically, namely, Dabur Chayawanprash. It was argued that Dabur had market share of 63% of the total market of Chayawanprash throughout India and the impugned advertisement branding Chayawanprash as a product which is not suitable in summer amounted to disparaging its product.* ***The Court accepted this contention and held that even if there be no direct reference to the product of the plaintiff and only a reference is made to the entire class of Chayawanprash in its generic sense, still it may amount to disparagement.*** *It was found that there was insinuation against user of Chayawanprash during the summer months in the advertisement in question and it gave rise to the cause of action to Dabur Chayawanprash for the reason that it is also a Chayawanprash as against which disparagement is made.*

xxx xxx xxx"

(Emphasis Supplied)

59. Further, from the perspective of the consumer, reading the impugned Print Advertisements, the meaning conveyed is that the plaintiff's Chyawanprash, which contains 40 ayurvedic herbs is ordinary, and therefore not a classical ayurvedic medicine. The consumers ought not to settle for ordinary, when the defendants' Chyawanprash, manufactured truly as per ancient ayurvedic texts, stated to contain 51 ayurvedic herbs/ingredients, is available. As noted above, Section 3(a) of the Drugs and Cosmetics Act defines ayurvedic medicine and in terms thereof, all ayurvedic medicines must be manufactured in accordance with the formulae prescribed in the

authoritative books of ayurvedic systems of medicine, specified in the First Schedule of the Drugs and Cosmetics Act. Thus, any ayurvedic medicine, including Chyawanprash, which is manufactured as per the ingredients and formulae set out in the authoritative books listed in the First Schedule of the Drugs and Cosmetics Act, cannot be stated to be inferior or ordinary in comparison to another ayurvedic medicine, by adopting the ingredients and formulae listed in another authoritative Ayurveda book, listed in the First Schedule. The intent and overall effect of the impugned advertisements are to negatively portray other Chyawanprash in the market, including, plaintiff's 'Dabur Chyawanprash' and to denigrate the entire category as ordinary, by conveying the message that they are not prepared as per correct ayurvedic texts, and are therefore, inferior or sub-standard.

60. Thus, to convey a message through the impugned advertisements, that only Patanjali follows the tradition established by great sages, is incorrect and disparages the entire class of Chyawanprash in general. If manufacturers follow the ayurvedic books strictly, as enlisted in Schedule I of the Drugs and Cosmetics Act, only then, the said product is licenced as Chyawanprash in terms of Section 3(a) of the Drugs and Cosmetics Act. Thus, the plaintiff and other manufacturers of Chyawanprash, who manufacture the same in accordance with the ingredients and formulae prescribed in the authoritative books of ayurvedic systems and medicines, follow the ayurvedic traditions. Just because the plaintiff follows a different ayurvedic text book from the one followed by the defendants does not make the product of the plaintiff or other manufacturers of Chyawanprash following other Ayurveda text books as enlisted, as ordinary and not as per the ayurvedic traditions/scriptures.

61. It is manifest that anybody who manufactures an ayurvedic drug by

following the statute and the scriptures as enlisted in the statute, cannot be denigrated as ordinary, when the statute considers it to be as good and permissible ayurvedic drug, i.e., Chyawanprash in the present case. Therefore, the defendants cannot rubbish the plaintiff or other manufacturers, who manufacture Chyawanprash strictly as per the enlisted ayurvedic scriptures, as ordinary.

62. Further, as long as the plaintiff or any other manufacturer of Chyawanprash, has a drug license and manufactures as per the Ayurveda books as detailed in the Drugs and Cosmetics Act, they cannot be said to not have knowledge of Ayurveda. This is clearly a false statement, and does not fall within puffery. Acclamation of one's products and even stating that they are better than those of the rival is not actionable. However, false representation as to the quality or character of the competitor's products would fall in the category of disparagement.

63. Further, this Court cannot ignore the diverse and widespread viewership of television channels and electronic media. Electronic advertisements have a larger audience pool and a deeper impact on the viewers, affecting their choices and preferences. Therefore, while dealing with cases of electronic advertisements, Courts have to be mindful of the overall message which an advertisement seeks to communicate. In this context, it would be useful to refer to the judgment in the case of ***Glaxosmithkline Consumer Healthcare Ltd. Versus Heinz India (P) Ltd.***[11]**,** wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> ***27. <u>This Court is conscious of the powerful and lasting impact that audio visual images have on viewers. Unlike the printed word, which</u>***

[11] ***2010 SCC OnLine Del 3932***

> ***is processed analyzed, and assimilated uniquely by each individual, an advertisement in the electronic media, particularly, has a different impact. First, it has a wider spread; it is perceived aurally through different senses, such as sound, visual, and printed. The suggestive power of this medium is greater. Second, such advertisements use several different tools, like music, dialogue, colors, and other aids, to bring home the message. Advertisements through this medium can, and do operate at conscious and subconscious levels; their power of suggestion extends not just to the discerning, or educated viewer, but to an entire range of viewership, with diverse income earning capacities, educational attainments, tastes, and so on. They influence even children. The impact of a catchy phrase, a well acted skit or story line, or even distinctive sounds or distinctive collocation of colors, can well define the brand or product's image, by imprinting it in the public memory forever*****……
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

64. Furthermore, the test of an advertisement constituting disparagement has to be seen from the point of view of an ordinary reasonable man, i.e., what would be the impact/impression of the advertisement on said reasonable and ordinary person of average intelligence. In this regard, Division Bench of this Court in the case of ***Colgate Palmolive Company and Anr. Versus Hindustan Unilever Ltd.***[12], has held as follows:

> *"xxx xxx xxx*
>
> *38. Our attention was drawn to paragraph 19 of the aforesaid judgment in Tesla Motors (supra) which reads as under: -*
>
> *"19. It was common ground that the judge applied the correct principles for the purposes of determining what meanings relating to the Roadster's range the programme was capable of bearing. They were derived from Skuse v. Granada TV [1996] EMLR 278 and Jeynes v. News Magazines Ltd. [2008] EWCA Civ 130 (unreported) and are summarised as follows in paragraph [10] of his judgment:*
>
> *"(1)* ***The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable reader reading the article or***

[12] ***2013 SCC OnLine Del 4986***

viewing the programme once.

(2) ***The hypothetical reasonable reader (viewer) is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.*** *(Emphasis added.)*

(3) While limiting its attention to what the defendant has actually said or written the court should be cautious of an over-elaborate analysis of the material in issue.

(4) The reasonable reader does not give a newspaper item the analytical attention of a lawyer to the meaning of a document, an auditor to the interpretation of accounts, or an academic to the content of a learned article.

(5) ***In deciding what impression the material complained of would have been likely to have on the hypothetical reasonable reader the court is entitled (if not bound) to have regard to the impression it made on them.***

(6) ***The court should not be too literal in its approach.***

The above list was broadly followed by the Court of Appeal in Jeynes v. News Magazines Ltd. [2008] EWCA Civ 130 at [14], save that it added the important point that the hypothetical reader is taken to be representative of those who would read the publication in question."

39. We do not think that there is any quarrel with the principles as enunciated in the above referred passage from the decision in Tesla Motors (supra). While determining as to how average men view an advertisement, it cannot be assumed that the average men tend to choose a derogatory meaning where other simple non-disparaging meanings are available. ***However, in cases where the advertisement presents an impression which any reasonable person could perceive as being derogatory or defamatory or disparaging, the goods/services of another person then certainly it would not be reasonable to discard that view only because certain other meanings are also possible.*** *The aid to the multiple meaning rule must be taken only in such circumstances where two plausible meanings are possible and it is probable that certain viewers (readers) would adopt a view which is disparaging. In the present case, it is not necessary for us to delve into these contentions much further as, in our view, the facts of the present case do not suggest the dilemma of two divergent plausible views.*

xxx xxx xxx"

(Emphasis Supplied)

65. Similarly, elucidating on the aspect of a reasonable man, from whose point of view the advertisement is to be assessed, this Court in the case of ***Reckitt Benckiser (India) Pvt. Limited and Another Versus Wipro Enterprises (P) Limited*** (supra), has held as follows:

> *"xxx xxx xxx*
>
> ***111.*** *The overall legal position that emerges from these decisions is, therefore, the following:*
>
> *xxx xxx xxx*
>
> *(x)* ***The reasonable man, from whose point of view the advertisement is to be assessed, is a right thinking member of the general public, and not a member of any particular class or section. He***
> ***(a) is not naive,***
> ***(b) can read between the lines,***
> ***(c) can read in implication into the advertisement,***
> ***(d) may indulge in some amount of loose thinking,***
> ***(e) is not avid for scandal and***
> ***(f) does not select a derogatory, or bad, meaning to be attributed to an advertisement where alternative, non-derogatory meanings are also available.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

66. It is to be noted that the advertisements in question pertain to an ayurvedic drug, i.e., Chyawanprash. Hence, to an average person who watches the impugned TVC, where Mr. Ramdev, an acknowledged yoga and vedic expert, declares that only the defendants possess the knowledge of ayurvedic texts to prepare original Chyawanprash, they would obviously be influenced by such statements and believe them to be true, and discard other Chyawanprash. While assessing the overall impact of the impugned TVC on the audience, other factors, such as the person endorsing the advertiser's product, etc., also need to be taken into account. Therefore, the impugned TVC, in its manner of presentation as well as intent, seeks to disparage the entire class of Chyawanprash.

67. Thus, as noted above, the Print Advertisements are an instance of specific disparagement of plaintiff's product, whereas, the TVC is an instance of generic disparagement with respect to entire class of Chyawanprash in the market.

68. A number of judgments have been relied upon by both the parties during the course of arguments and in their written submissions. The judgments as relied upon by the defendants are clearly distinguishable. It is further to be noted that the judgments cited by the defendants pertain to non-medicinal products.

69.1 As regards the judgment in the case of ***Havells India Ltd. & Anr. Versus Amritanshu Khaitan & Ors.***[13], the said case pertained to LED bulbs. In the said case, the lumens in the defendant's bulb was higher, hence, comparison was upheld. However, the number of ingredients is not the determinative factor in respect of Chyawanprash, a classical ayurvedic medicine. Chyawanprash, if prepared as per the formulation and ingredients specified in one of the ayurvedic texts, listed in the First Schedule of the Drugs and Cosmetics Act, would be Chyawanprash. Mere presence of additional ingredients in 'Patanjali Special Chyawanprash', does not make it superior to other Chyawanprash, which are also prepared as per the ayurvedic texts. Other Chyawanprash in the market do not cease to be classical ayurvedic medicines because of lesser number of ingredients, or are liable to be shunned/ rejected, as communicated in the impugned advertisements by defendants.

69.2 The following principles emerge from the aforesaid judgment:

I. Comparative advertising is any advertising which explicitly or by

[13] ***2015 SCC OnLine Del 8115***

implication, identifies a competitor or goods or services offered by a competitor.

II. Comparison made should be factual, accurate and capable of substantiation.

III. Advertisement should not unfairly denigrate, attack or discredit any other products, advertisers or advertisements directly, or by implication.

IV. Statements of comparison with competitor's products should not be defamatory or libelous or confusing or misleading.

V. Competitors can certainly compare, but cannot mislead.

VI. For any advertisement to be considered misleading, two essential elements must be satisfied. First, misleading advertising must deceive the persons to whom it is addressed or at least, must have the potential to deceive them. Secondly, as a consequence of its deceptive nature, misleading advertising must be likely to affect the economic behavior of the public to whom it is addressed or harm a competitor of the advertiser.

69.3 Considering the present case on the anvil of the aforesaid principles, the present case is clearly that of disparagement.

70.1 In the case of ***Zydus Wellness Products Ltd. Versus Dabur India Limited***[14]**,** the product was orange drink/ glucose powdered drink. In the said case, the Court held that it could not specifically find whether the orange drink shown in the advertisement was powdered glucose or orange fruit juice or orange soft drink. However, in the present case, the product category is unmistakable, i.e., Chyawanprash. The product Chyawanprash is clearly stated and identified in the impugned TVC and Print Advertisements.

70.2 The aforesaid case is a case of comparative advertising in a television

[14]***2022 SCC OnLine Del 4593***

commercial. In the present case, the impugned TVC is a case of generic disparagement.

70.3 Further, in the aforesaid case, upon examination, the Court found that the claims made in the advertisement were truthful.

70.4 The following principles emerge from the aforesaid judgment:

I. There must be express or implied reference to a competitor or its goods or a product category.

II. Untruthful disparagement is not permissible.

III. An objection can be raised where the representations being made are absolutely false or misleading.

70.5 Considering the principles as above, the aforesaid case is clearly distinguishable and does not apply to the facts and circumstances of the present case.

71.1 The case of ***Reckitt Benckiser (India) Pvt. Limited and Another Versus Wipro Enterprises (P) Limited***[15], relied upon by the defendants, is again distinguishable. The said case is a case of comparative advertising in a television commercial, while the instant case is a case of generic disparagement by way of the impugned TVC.

71.2 The following principles emerge from the aforesaid judgment:

I. Ordinary means usual, normal, or of no special quality. Sometimes, the word ordinary is used in a negative way to mean somewhat inferior, below average, or just plain – in much the same way as the word mediocre.

II. The latitude of free commercial speech guaranteed by Article 19(1)(a) of the Constitution of India cannot be extended to misrepresentations.

III. Representations of fact, if they are untrue, are impermissible.

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[15] ***2023 SCC OnLine Del 2958***

IV. While it is open for a competitor to state that best services are offered by them, it is not open for the competitor to advertise that other competitors in the market lack necessary skills/knowledge/know-how.

V. Even if the rival product was not specifically targeted, an indirect representation, which was sufficient to identify the product, was as good as direct targeting.

VI. An advertisement must not be false, misleading, unfair or deceptive, irrespective of whether it is extolling the advertised product or criticizing its rivals. Misrepresentation and untruth in advertisements is impermissible.

VII. An advertisement must be honest, accurate and true, and cannot convey an overall misleading message, from the standpoint of the customer.

VIII. While it is permissible to state that the advertised product is superior to the competitor's, it is not permissible to attribute this superiority to some failing, or fault, in the product of the competitor. An advertisement cannot claim that a competitor's goods are bad, undesirable or inferior. The subtle distinction between claiming one's goods to be superior to the others', and the others' goods to be inferior to one's own, has to be borne in mind.

71.3 Considering the principles as laid down in the aforesaid case, a clear case of disparagement is made out in the present case.

72.1 In the case of ***Dabur India Ltd. Versus M/s. Colortek Meghalaya Pvt. Ltd.***[16], as relied upon by the defendants, the product is mosquito repellant cream. The said case is again distinguishable, as it was held in categorical terms that the advertisement in question did not, either overtly or covertly, denigrate or disparage the product of the appellant therein.

72.2 The principles that emerge from the said judgment are as follows:

[16] ***2010 SCC OnLine Del 391***

I. An advertisement must not be false, misleading, unfair or deceptive.

II. If an advertisement extends beyond the grey areas and becomes false, misleading, unfair or deceptive, it will not have the benefit of any protection under Article 19(1)(a) of the Constitution of India.

72.3 Considering the principles as laid in the aforesaid judgment, the fact of disparagement in the present case is clearly established.

73. The case of ***Marico Limited Versus Adani Wilmar Ltd.***[17]***,*** as relied by the defendants, is again distinguishable. The product in the said case was cooking oil. The Court held that no part of the advertisement was disparaging of the plaintiff's products. Neither did the advertisement state that the plaintiff's products were bad. However, the position is totally different in the present case.

74.1 Similarly, the case of ***Philips India Pvt. Ltd. Versus Shree Sant Kripa Appliances Pvt. Ltd.***[18]***,*** relied upon by the defendants is distinguishable. The said judgment dealt with the product namely, CFL bulbs. The Court held that the fact that the defendant therein sought to extol the virtues of LED bulbs over CFL bulbs was clear, however, the same was not done with a malicious intent to injure plaintiff's product.

74.2 The following principles emerge from the aforesaid judgment:

I. For an action of malicious falsehood, the plaintiff must prove that the impugned statement/representation is untrue, and that the same is made maliciously, without just cause or excuse.

II. An entity cannot indulge in commercial free speech which tends to maliciously injure a rival/competitor.

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[17] ***2013 SCC OnLine Del 1513***
[18] ***2015 SCC OnLine Del 6609***

75. Considering the aforesaid principles and detailed discussion in the preceding paragraphs, that as the product in question is an ASU drug which is regulated under the Drugs and Cosmetics Act, the issue of disparagement has to be examined at a stricter threshold, a strong *prima facie* case of disparagement is apparent in both forms of advertisements, i.e., TVC and Print.

76. The submissions made on behalf of the defendants that interim relief can only be in aid of final relief, and that the final relief cannot be granted by way of interim relief, is an established principle of law. However, this Court has the authority to pass interim orders when *prima facie* case is established, along with other factors like balance of convenience and irreparable damage. The injunction prayed by way of the present applications is interim in nature. On the other hand, the final prayer in the suit pertains to permanent injunction, which is different from the interim injunction as sought by way of the present applications.

77. This Court further takes into account that the remedy of injunction has a larger role to play in matters of defamation or disparagement as pecuniary compensation cannot be enough to compensate such defamation. Thus, a Division Bench of the Madras High Court in the case of ***Gillette India Limited Versus Reckitt Benckiser (India) Private Limited***[19], has held as under:

> *"xxx xxx xxx*
>
> *103. In granting interim relief of injunction, the* ***Court is required to examine whether the plaintiff has made out a strong prima facie case, whether pecuniary compensation would afford the plaintiff applicant for injunction adequate relief*** *and whether the balance of convenience is in favour of passing of an interim order in favour of*

[19] ***2018 SCC OnLine Mad 1126***

the plaintiff applicant.

104. In judging the balance of convenience, the ***Court would have to weigh the competing interest of the applicant for injunction and the party opposing injunction and address to itself the question of who would suffer greater prejudice*** *- the plaintiff applicant for injunction by refusal of injunction, if the proceedings ultimately succeeded, or the respondent by grant of injunction, if the suit ultimately failed.*

105. ***If in a suit for disparagement in relation to an advertisement a strong prima facie case of disparagement is made out, injunction would necessarily have to be granted, for pecuniary compensation could never compensate defamation and/or disparagement. By grant of injunction, the opposite party would only be restrained from disparaging the applicant for injunction till a final decision was taken by the Court. The prejudice to the applicant for injunction by continuous exhibition of disparaging advertisements would be irreparable, and far greater than the prejudice to the opposite party, if the applicant ultimately succeeded.***

xxx xxx xxx"

(Emphasis Supplied)

78. Considering the aforesaid detailed discussion, the plaintiff has established a strong *prima facie* case in its favour. Balance of convenience also lies in favour of the plaintiff and against the defendants. Further, the plaintiff shall suffer irreparable loss, including loss of reputation, if interim relief, as prayed in the present applications, is not granted.

79. In view of the discussion hereinabove, this Court directs that from the Print Advertisements, the defendants shall delete the first two lines, i.e., *'Why settle for ordinary Chyawanprash made with 40 herbs?'*. The defendants can accordingly modify the impugned Print Advertisements in both Hindi and English languages.

80. Similarly, as regards the impugned TVC, the defendants are directed to delete the lines as given in the first three columns of the table showing the story board of the impugned TVC, i.e., *'Jinko Ayurved or Vedon ka gyaan nahi Charak, Sushrut, Dhanvantri aur Chyawanrishi Ki Parampara ke*

Anuroop, original Chyawanprash kaise bana payenge'. Similarly, the defendants are directed to delete the lines as given in the last column of the table showing the story board of the impugned TVC, *'Toh ordinary Chyawanprash kyu'*, from their TVC.

81. The defendants shall be allowed to run the impugned Print Advertisements and TVC after the aforesaid modifications.

82. The other issues, as raised before this Court with regard to use of the word 'special', communication regarding '51 precious herbs', presence of 'mercury' in defendants' product, and other claims made by the defendants in their impugned Print Advertisements and TVC, are subject matter of trial in the suit.

83. It is clarified that the observations made herein pertain to adjudication of the interim applications only. Nothing contained herein shall be construed as final expression on the merits of the case.

84. Accordingly, the defendants are restrained from publishing the impugned Print Advertisements and airing the impugned TVC.

85. With the aforesaid directions, the present applications are accordingly disposed of.

(MINI PUSHKARNA)
JUDGE

JULY 03, 2025
Ak/Au