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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.340 OF 2017

IN

NOTICE OF MOTION (L) NO.690 OF 2017

IN

SUIT (L) NO.204 OF 2017

Gujarat Co-operative Milk Marketing)
Federation Ltd.)
A Cooperative Society registered under)
the Gujarat Co-operative Society Act,)
1961 having its Registered Office at)
Amul Dairy Road, Anand and zonal)
office at Rampart House, 4th floor, 22-)
A, 26-A Dubhash Marg, Fort Mumbai -)
400023)

.... Appellant
(Original Defendant No.1)

V/s

1] Hindustan Unilever Ltd.)
A company incorporated under the)
provisions of the Companies Act, 1913)
having its Registered Office at Unilever)
House B D Sawant Marg, Chakala,)
Andheri (E), Mumbai – 400 099)

....Respondent No.1
(Original Plaintiff)

2] FCB Ulka Advertising Pvt. Ltd.)
Company incorporated under the)
Companies Act, 1956 and having its)
office and place of business at 4th floor)
Nirmal Building, Barrister Rajni Patel)
Marg, Nariman Point, Mumbai.)

3] Vadilal Industries Ltd.)
A company incorporated under the)



Companies Act, 1956 and having)
its office/place of business at Vadilal)
House, near Navrangpura Railway)
Crossing, Navrangpura, Ahmedabad-9,)
Gujarat.)

4] Vadilal Dairy International Limited,)
Company incorporated under the)
Companies Act, 1956 and having its)
office/place of business at Plot No. M-13))
MIDC Industrial Area, Tarapur.)

....Respondents.

Mr. Ravi Kadam, Senior Counsel, alongwith Mr. Ashish Kamat and
Mr. Vishal Maheshwari, Ms. Sheetal Kotecha, Ms. Astha Thakar i/b
M/s V.M. Legal Advocates for the Appellant/Applicant.

Mr. Aspi Chinoy, Senior Counsel alongwith Dr. Birendra Saraf,
Mr. Hiren Kamod, Mr. Nishad Nadkarni i/b M/s. Khaitan and Co.,
Advocates for the Respondent No.1.

**CORAM: B. R. GAVAI &
RIYAZ I. CHAGLA, JJ.**

DATE: 13th December, 2018

ORAL JUDGMENT (Per B. R. Gavai, J.)

1] Appellant/Defendant No.1 challenges the Judgment and
Order dated 16th June, 2017 passed by the learned Single Judge in
Notice of Motion No (L) No.690 of 2017 in Suit (L) No.204 of 2017,
thereby allowing the Notice of Motion filed by Respondent No.1/
Plaintiff and restraining the Appellant from *inter alia* (i) telecasting or

broadcasting or otherwise howsoever communicating to the public or publishing two Television Commercials (impugned TVCs) or any part thereof or any other advertisement of a similar nature in any language or in any manner causing the impugned TVCs or any part thereof or any other advertisement of a similar nature to be telecast or broadcast or communicated to the public or published in any manner and (ii) disparaging or denigrating the Plaintiff's KWALITY WALL'S products (including Frozen Desserts manufactured and/ or sold under the said brand and sub-brands thereof) or the Plaintiff's business in any manner whatsoever.

2] The facts, in brief, giving rise to the present Appeal are as under:-

3] The Plaintiff – Hindustan Unilever Limited, is a Public Limited Company incorporated under the Companies Act, 1956. Prior to 1956, the name of the Plaintiff was Lever Brothers (India) Limited which was changed to Hindustan Lever Limited with effect from 3rd October, 2007 and subsequently to Hindustan Unilever Limited on

11th June, 2007. The Plaintiff carries on business of manufacturing and selling Fast Moving Consumer Goods ('FMCG'), including frozen desserts and ice cream under the mark "KWALITY WALL'S".

4] Defendant No.1 – Gujarat Co-operative Milk Marketing Federation Limited is a co-operative body of milk producers in Gujarat and is engaged in marketing of various dairy and dairy based products including ice creams under the mark "AMUL" and is a competitor of the Plaintiff. Defendant No.2 – FCB Ulka Advertising Pvt. Ltd is an advertising agency.

5] Defendant Nos. 3 and 4 – Vadilal Industries Ltd and Vadilal Dairy International Limited are manufacturers of frozen dessert products i.e. the same class of products as that of the Plaintiff. The said Defendants have been impleaded as Defendants by the Plaintiff since, according to the Plaintiff, they have common interest as of the Plaintiff.

6] It was the case of the Plaintiff that they are one of the India's

most well-known and reputed Company in the business of FMCG having their presence in foods and beverages sectors and household & personal care products. The Plaintiff's products are spread across several distinct consumer categories. The case of the Plaintiff is that their sales are over several crores. It is the case of the Plaintiff that their products are of excellent quality, enjoy a very high reputation and are sold in over one million retail outlets. It is further the case of the Plaintiff that "KWALITY" has been a well recognized brand in India, having been in the market for over 70 years. The said brand was acquired by the Plaintiff before entering into the business of ice creams and desserts in India. The said brand KWALITY has been used alongwith Plaintiff's own global brand WALL'S as KWALITY WALL'S. It is the case of the Plaintiff that, since it was the first ever ice cream brand introduced in the Indian market, "KWALITY" enjoys a special status in the eyes of public being a very popular trade mark. The Plaintiff has been manufacturing and selling the KWALITY WALL'S products in India since 1998. According to the Plaintiff, majority of the KWALITY WALL'S products sold in India are classified as frozen desserts under the Food and Safety Standards Act, 2006 ('FSSA') and

the Regulations framed thereunder. It is the case of the Plaintiff that the Plaintiff is the market leader amongst the organized players in the frozen deserts category with 51.3% market share. It is the case of the Plaintiff that its products, including its frozen desserts, scrupulously meet, satisfy and comply with all the requirements of law, rules, regulations and other requirements. According to the Plaintiff, frozen desserts are safe, healthy, hygienic and fit for human consumption.

7] It is the case of the Plaintiffs that the two impugned Television Commercials (For short 'TVCs') advertised by Defendant Nos. 1 and 2 had an effect of disparaging the frozen desserts, majority of which are manufactured and marketed by the Plaintiff, having 51.3% of the market share. It is the case of the Plaintiff that in the said TVCs, it is shown that the product of the Defendant No.1 is manufactured by using 100% milk whereas frozen desserts are manufactured by using Vanaspati. It is the case of the Plaintiff that Vanaspati is hydrogenated vegetable oil, which is considered to be unhealthy in the Indian society. It is the case of the Plaintiff that Vanaspati is considered to be having bad effects on the health of the consumers. It

is the case of the Plaintiff that the Plaintiff is not using Vanaspati in its product but is using edible vegetable oil. It is the case of the Plaintiff that, both, ice creams as well as frozen desserts contain 90% of milk. Insofar as ice creams are concerned, ice creams contain a small amount of dairy fat whereas insofar as frozen desserts are concerned, frozen desserts contain a small amount of edible vegetable oil, which, according to the Plaintiff, is more healthy than dairy fat. However, the impugned TVCs depict that frozen desserts contain 100% vanaspati oil and as such, the said TVCs are not permissible in law.

8] In this background, the Plaintiff has filed the suit to restrain Defendant Nos. 1 and 2 from inter alia (i) telecasting or broadcasting or otherwise howsoever communicating to the public or publishing two Television Commercials or any part thereof, or any other advertisement of a similar nature in any language, or in any manner causing the Impugned TVCs or any part thereof or any other advertisement of a similar nature to be telecast or broadcast or communicated to the public or published in any manner and (ii)

disparaging or denigrating the Plaintiff's KWALITY WALL'S products (including frozen desserts manufactured and / or sold under the said brand and sub-brands thereof), or the Plaintiff's business in any manner whatsoever.

9] It further appears that in the said Suit, Plaintiff has also filed Notice of Motion seeking interim injunction of similar nature against the Defendants. The said Notice of Motion was resisted by the Defendants. The defence of the Defendants was that, the advertisements did not show product of the Plaintiff. However, what was shown was the comparison between the product of the Defendants and the frozen desserts. It was also the contention of the Defendants that atleast 30% of the manufacturers of the frozen desserts use Vanaspati i.e. hydrogenated vegetable oil and as such, what was sought to be shown by them was a factual position. The Motion was therefore vehemently opposed by the Defendants.

10] The learned Single Judge, after hearing the parties at length, has granted an order of injunction as aforesaid. Being aggrieved thereby, the present appeal.

11] We have heard Mr. Kadam, learned Senior Counsel appearing on behalf of the Appellant/Defendant No.1 and Mr. Chinoy, learned Senior Counsel appearing on behalf of the Respondent No.1/Plaintiff.

12] Mr. Kadam, learned Senior Counsel, submitted that insofar as the first TVC is concerned, the word used by the Defendants was 'Vanaspati'. It is submitted that, since the Plaintiff had an objection to the use of the word 'Vanaspati', the same was omitted in the subsequent advertisement and was replaced with the word "Vanaspati tel". Mr. Kadam further contended that, as a matter of fact, "Vanaspati tel" means edible vegetable oil, which is admittedly used by the Plaintiff in its product. It is submitted that a perusal of the complaint which was made by one of the Senior Officers of the Plaintiff to the Advertisement Standard Council of India ("ASCI"), would show that what was found to be objectionable was the word 'Vanaspati'. He therefore submitted that, once the Defendants omitted the word "Vanaspati" and substituted the same with the word

“Vanaspati tel”, which, in fact, is used by the Plaintiff in its product, the grievance could not survive.

13] Mr. Kadam, learned Senior Counsel for the Appellant, further submitted that, the learned Single Judge ought not to have granted relief in favour of the Respondent No.1/Plaintiff inasmuch as the Plaintiff has indulged into suppression of material facts and on the very ground of conduct of the Plaintiff, the learned Single Judge ought to have rejected the Motion. He submitted that the correspondence between the Plaintiff and ASCI has not been placed on record in the suit by the Plaintiff.

14] Mr. Kadam further submitted that, to find out as to whether a particular TVC disparages the product of the rival or not, Court has to apply the test of an ordinary person with reasonable intelligence. He submitted that, what is required to be seen is that, in the short period during which the advertisement is aired, what is registered in the mind of an ordinary person with reasonable intelligence. He submitted that it is not permissible to analyse the

advertisement in great detail to find out as to whether the same would amount to disparagement or not. He, however, submitted that the judgment of the learned Single Judge would reveal that, he has discerned the advertisement in great detail and after doing that exercise, has found the advertisement to be disparaging. He therefore submitted that the procedure as adopted by the learned Single Judge, was not permissible in law.

15] Mr. Kadam further submitted that the Appellant had not at all referred to the product of the Plaintiff but what was shown was comparison between ice cream and frozen dessert. He therefore submitted that the Plaintiff had no cause of action to file the suit on the ground of generic disparagement.

16] Mr. Kadam has relied on following judgments in support of the proposition that the comparison between the two products is permissible.

1] Reckit Benckiser (India) Limited vs. Naga Limited & Ors¹

1 ILR (2003) I DELHI 325

- 2] *Godrej Sara Lee Ltd vs. Reckitt Benckiser (I) Ltd*²
- 3] *Dabar India Ltd. vs. Colortek Meghalaya Pvt. Ltd. & Anr*³
- 4] *Marico Limited vs. Adani Wilmar Ltd.*⁴
- 5] *Philips India Pvt. Ltd. vs. Shree Snat Kripa Appliances Pvt. Ltd.*⁵
- 6] *Havells India Ltd. & Anr. vs. Amritanshu Khaitan & Ors*⁶
- 7] *Procter & Gamble Home Products Private Limited vs. Hindustan Unilever Ltd.*⁷
- 8] *Medley Laboratories (P) Ltd. vs. Alkem Laboratories Limited*⁸
- 9] *Godrej Consumer Products Limited vs. Initiative Media Advertising & Anr.*⁹

He further submitted that if, in comparison, true facts are brought to the notice of the consumers at large, it would not amount to disparagement but would amount to educating the consumers. He further submitted that, while considering the advertisement, rival is not expected to be hypersensitive to the advertisement. He submitted that, if the TVC as a whole is considered, the impression which the ordinary person with reasonable intelligence may get is that the Appellant uses milk for manufacturing its product whereas, in the frozen desserts, manufacturers also use edible oil, which is a matter of

2 2006 (32) PTC 307 (Del.)

3 2010 SCC Online Del 391

4 2013 (54) PTC 515 (Del)

5 CS(OS) No.1913/2014 dt 19.01.2015 - High Court of Delhi

6 2015 (62) PTC 64 (Del)

7 2017 (69) PTC 528 (Del)

8 2002 (25) PTC 592 (Bom)(DB)

9 2012 (52) PTC 260 (Bom) = 2012 SCC OnLine Bom 994

fact. The learned Senior Counsel therefore submitted that, the learned Single Judge has grossly erred in granting injunction.

17] Mr. Kadam, in the alternative, submitted that the injunction granted by the learned Single Judge is in the widest possible terms, which, in no case, could have been granted. He submitted that the learned Single Judge has enjoined the Appellant from even airing similar advertisement without defining the scope thereof. He submitted that on account of injunction granted by the learned Single Judge, the Appellant stands at a risk, to face contempt proceedings, inasmuch as its competitors may challenge any advertisement aired by the Appellant on the ground that, it is similar to the one which is the subject matter of the present proceedings. He submitted that, in any case, injunction granted under clause (ii) of the operative part of the impugned order is not sustainable in law, since it has been granted in the widest possible terms, without there being any material to show that the Appellant was even attempting generally to disparage products of the Plaintiff. He submitted that, at the most, the learned Single Judge could have granted injunction,

restraining the Appellant from airing the TVCs which were impugned in the suit. He submitted that however the learned Single Judge has gone far ahead and granted injunction in the widest possible terms.

18] Mr. Chinoy, learned Senior Counsel appearing on behalf of the Respondent/Plaintiff, submitted that the learned Single Judge has considered all aspects of the matter. He also submitted that what is required to be seen by the Court is, what impression an ordinary person with reasonable intelligence would get, after seeing the advertisement. He submitted that if TVCs are seen in its entirety, the impression that the ordinary person with reasonable intelligence would get is that, the product of the Appellant is manufactured by using only milk whereas, the frozen dessert, in which market, the Respondent No.1/Plaintiff, holds majority shares, is manufactured by using Vanaspati. He submitted that, the message that the advertisement intends to give to the consumers at large, is apparent from the advertisement. He submitted that in one Cup, the stream of milk is shown to be flowing, whereas, in other Cup with label “frozen dessert” Vanaspati i.e. semi solid product is dropping. He submitted, that since in India, Vanaspati is considered to be dangerous to the

health, the message is loud and clear, that frozen desserts are not good for health. He submitted that, insofar as puffing up of the product of the Appellant is concerned, nobody could have objection, even if an untrue statement is made. However, the advertisement carrying the message which disparages the product of the competitors, would not be permissible in law.

19] Mr. Chinoy also submitted that, as a matter of fact, in the earlier advertisements, the words used by the Appellant were that the frozen desserts are made from cheaper vegetable oil/fats. However, now subsequently, the Appellant has improvised itself and started using the word “Vanaspati”, which is considered to be harmful for health. In reply to the contention raised by Mr. Kadam with regard to the meaning of the word “Vanaspati” and the words “edible vegetable oil”, being having the same meaning in FSSA Regulations is concerned, Mr. Chinoy submitted, that the consumers are not expected to sit with dictionary to find out, what is the meaning of the word or, for that matter, to go into definition of a particular product under the Regulations framed under FSSA. He submitted that, what

is required to be seen is, as to what is the meaning of that word, in common parlance. He submitted that, in common parlance, the word “Vanaspati” is identified with hydrogenated vegetable oil. He therefore submitted, that word “Vanaspati” is identified to be an unhealthy product and therefore such advertisement which shows, that the product of the Plaintiff is made only out of “Vanaspati” amounts to nothing else but disparagement. Mr. Chinoy further submitted that, not only that, in the affidavit in reply filed to the Notice of Motion, the Appellant itself has admitted that Vanaspati is not good for health. It is therefore submitted that, knowing very well that Vanaspati is not considered to be good for health, the Appellant has used the said word in the advertisement, only with an intention to disparage the product frozen desserts.

20] The present appeal is an appeal against the grant of injunction in favour of the Plaintiff. The scope of interfering in appeal which is filed challenging the grant or refusal to grant injunction, has been laid down by the Hon'ble Supreme Court in the case of *Wander Ltd and another vs. Antox India P. Ltd.*¹⁰. It will be relevant to reproduce the

¹⁰ 1990 (Supp) SCC 727

following observations made by the Hon'ble Supreme Court in the said case:-

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* (1960) 3 SCR 713 : AIR 1960 SC 1156 (SCR 721)

“...These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton* 1942 AC 130 'the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'.”

It could thus be seen that, Their Lordships of the Hon'ble Supreme Court have held that unless this Court comes to a finding that discretion exercised by the Trial Court was found to be exercised in a perverse or illegal manner, it will not be permissible for this Court to interfere with the same. It has been further held by Their Lordships that if two views are possible, merely because another view appears to be more probable to the appellate court, cannot be the ground to interfere with the discretion exercised by the Trial Court. It has further been held, that merely because the appellate court finds that, had it exercised the discretion as original court, it would have decided another way, also cannot be the ground to interfere with the discretion exercised by the learned Trial Court, if the view taken by it was a possible view. In the light of these guiding principles, we have to examine the present case.

21] The learned Single Judge has, in detail, considered both the advertisements. We find that it will be appropriate to refer to the following observations of the learned Single Judge in his order:

“17. Keeping in mind that Defendant No.1, as set out hereinabove, admits that the use of Vanaspati is harmful for health and the risk of heart disease associated with it, let us go back to the storyline of the first impugned TVC set out in paragraph 8 above. The same shows Shriya a young child, having a dental problem. She visits the Dentist with her father and is shown in the Clinic, demonstrating courage during her entire check-up, rare for children of her age. In the voice over to screen shots F, G, H, I and J it is, inter alia, stated that *“Shriya ki bahaduri ke inaam ko pure rakhna zaruri hai”, “Usse real milk wala Amul ice cream khilayein”, “Vanaspati wala nahi”, “unhe ice cream nahi frozen dessert kehte hain”, “ice cream word ke liye pehle pack check kareinreal milk real ice cream Amul”*. (emphasis supplied) Screen shots H and I along with the said voice over “Vanaspati wala nahi”, unhe ice cream nahi frozen dessert kehta hai, also depicts two cups side by side showing a stream of milk flowing/overflowing into the Amul product, whereas “Vanaspati” i.e. semi solid product flowing into the cup of frozen dessert. Furthermore, the product of Defendant No. 1 is shown as sparkling white, whereas the frozen dessert equivalent is depicted by a murky yellowish colour representing Vanaspati. By the above voice over and depiction, Defendant No. 1 has in no uncertain terms sought to convey the message to the consumers that Shriya needs to be given the product of the Defendant i.e. Amul ice cream, which is pure, and she should not be given the product which contains Vanaspati and which product is called frozen dessert. The Defendants have therefore made a false representation to the consumers and also

indulged in a negative campaign that no frozen dessert is pure, and only Amul ice cream is pure, as all frozen desserts contain Vanaspati, and are therefore inferior. The Defendant No. 1 has laid stress on 'Vanaspati' clearly with a view to suggest that therefore frozen desserts are not pure, are unhealthy and are inferior, and Amul ice cream which is made of pure milk should be consumed and not frozen desserts. Defendant No. 1 has therefore clearly made an attempt to influence the consumers not to buy frozen desserts. Additionally, as the story has a child protagonist, it leaves a scare in the minds of the viewers, who may also be parents, that Frozen Desserts are unsafe, not fit for children and hence are not the "correct choice". It certainly leaves an impression that when a child is given frozen dessert the child is consuming something which is full of Vanaspati. This is also in view of the product of Defendant No.1 being shown as sparkling white, whereas the frozen dessert is depicted with a murky yellowish colour. Though there is a Disclaimer shown in the first TVC, in very small illegible letters inter alia stating that "Vanaspati" mentioned in the voice over refers to "vegetable oil", the said representation itself is again incorrect and misleading, in view of it being explained hereinabove, that as per the law, i.e. under the FSS Regulations, Vanaspati cannot be equated with vegetable oil."

"18. The entire first TVC is therefore prepared by the Defendant No.1 to disparage the entire category of frozen desserts by putting a scare in the mind of the consumers that it contains Vanaspati (which is perceived as unhealthy) and is therefore not pure, is inferior, unhealthy, not the correct choice, should not be consumed and

instead the consumers should turn to the product of the Defendant No.1. From the case law discussed in paragraph 8 above, it is clear that it is settled law that the manufacturer of a product whilst advertising his product/s cannot say directly or indirectly that the product of the competitor is bad and/or harmful. If a manufacturer indulges in such negative campaigning, the same would amount to slandering of a rival product, which is not permissible in law, and entitles any manufacturer affected by such slandering of his product to an injunction against such negative campaigning. Thus I am convinced that by the first TVC the Defendant No. 1 has indulged in negative campaigning against its rival products i.e. 'Frozen Desserts' and is therefore guilty of generic disparagement and slander of the entire category of the 'Frozen Dessert' products.”

“19. A revisit to the second TVC which is reproduced in paragraph 8 above, makes it clear that the only change that the Defendant No. 1 made to the first impugned TVC, was that it replaced the word “Vanaspati” with “Vanaspati oil/tel” and commenced publication of the same on various digital media. Save and except the above change, all the other visual and oral features of the first impugned TVC were kept as it is in the second impugned TVC. What is most important is the fact that no change has been made in the visual representation of the second impugned TVC which shows Vanaspati falling into the cup along with the voice over stating 'Vanaspati Tel Wala Nahi' 'unhe ice cream nahi frozen dessert kehte hai' thereby once again attempting to influence the consumers of Frozen Dessert, not to consume the same on the ground

that Frozen Desserts are not pure, are unhealthy, inferior, and therefore not the correct choice. This dominant effect is not taken away by the use of the word ‘tel’ in the voice over. The addition of the word “tel” therefore does not make any difference to the intent, manner and storyline of the advertisement taken as a whole. The Disclaimer in letters which are illegible also makes no difference. The second TVC is therefore nothing but a continuation of the first TVC.....”

22] We have also seen the said TVCs. The first impression upon seeing the overall advertisement, that one would get is that the product of the Appellant viz ice cream is manufactured by using 100% milk, whereas frozen desserts are manufactured by using 100% Vanaspati or Vanaspati tel. The advertisement shows that a stream of white milk is flowing in the Cup of the product of the Appellant whereas in the Cup labeled as “Frozen Dessert”, chunk's of hydrogenated vegetable oil which is murky in colour, is flowing. It is thus clear that the first over all impression that the viewers of the advertisement may get is that the frozen desserts are manufactured by using 100% hydrogenated vegetable oil, which is unhealthy for consumers thereof.

23] We will refer to some of the judgments which have considered the issue.

24] One of us (B.R. Gavai, J.), while sitting as a Single Judge, had an occasion to consider an identical issue in the case of *Godrej Consumer Products Limited vs. Initiative Media Advertising & Anr*¹¹. In the said judgment, the Single Judge of this Court, while considering various earlier judgment on the issue, has observed thus :

10. In the case of *Dabur India Limited v. Colgate Palmolive India Ltd.* (cited supra), the sum and substance of TV advertisement complained of was that a Cinestar was seen stopping the purchasers of Lal Dant Manjan powder. He further informs them of the ill effects of such Lal Dant Manjan by rubbing it on the purchaser's spectacles which leaves marks which are termed by Cinestar as being akin to sandpapering. He also endorses the Colgate's (defendant therein) tooth power as being 16 times less abrasive and non damaging to the spectacles. He is heard telling the purchaser that it is easy to change spectacles but not the teeth. In the said case also, the product name of the plaintiff therein was not named. However, it was contended that red container/bottle used in the advertisement was identical with that one used by the plaintiff therein. In the said case the defendant had also expressed its willingness to drop the red container/bottle which, according to the plaintiffs identifies its product. In the said case, in spite of that learned single Judge of Delhi High Court took a view that no one can disparage a class or genre of a product, within which a complaining plaintiff falls and raise a defence that the plaintiff has not been specifically identified, and as such

11 2012(52) PTC 260 (Bom.)

granted injunction as prayed for. It will be relevant to refer to the following observations of the learned single Judge which read thus:

“21. The advertisement campaign on the visual media has an immediate impact on the viewers and possible purchaser's mind particularly when a well known cinestar is endorsing it. The plaintiff has thus made out a prima facie case of comparative strength particularly when the defendant does not deny that its campaign points out the deleterious effect of Lal Dant Manjan powder. The balance of convenience is also in the favor of the plaintiff as the effect of the advertisement aired cannot be repaired readily and easily. The averred right of the defendant to inform the purchasing public of the ill effects of the Lal Dant Manjan powder based on its commissioned study cannot tilt the balance of convenience in the favor of the defendant particularly when the plaintiff also seeks to rely upon studies commissioned by it to back up the merits of its product. Consequently, the non grant of an interim injunction would cause irreparable injury to the plaintiff not compensable in damages.”

11. The Delhi High Court again in *Reckitt Benckiser (India) Ltd. v. Hindustan Lever Limited* (supra) had an occasion to consider the advertisement of defendant therein telecast on television for promotion of its soap “LIFEBOY”. According to the plaintiff therein, it was allegedly disparaging the plaintiff's soap sold under the trade mark “DETTOL”. Again in the said case, the name of the plaintiff's product “Dettol” was not named in the said advertisement. The learned Judge observed thus:

“22. The question which needs resolution is: whether the orange soap shown in the advertisement could be said to have a reference to the DETTOL Original soap of the plaintiff. Ext. PW1/11 are some photographs extracted from the video clip of the said advertisement.

Photograph

Photograph

They clearly indicate the orange colour of the soap bar, the contours on the soap, the overall shape of the soap. Ext. PW1/8 is a sample of the DETTOL soap in the green coloured packaging. The new shape of the DETTOL Original toilet soap with the curved edges and the curvature in the middle is clearly displayed on the product packaging, which is further indicative of the importance given to the shape by the plaintiff in its marketing of the product. The packaging (Ext. PW1/8) also establishes the fact that although white is also used, green is the predominant colour. Although, the brand name, logo or the sword device does not appear in the orange bar of soap shown in the advertisement (Ext. PW1/2), there can be no misgiving that the bar of soap which has been shown in the said advertisement is of a colour similar to that of the plaintiff's DETTOL soap. The contours, curvature as well as the overall shape of the orange bar of soap in the advertisement itself, are virtually the same as that of the contours, curvature and overall shape of the plaintiff's DETTOL Original soap. Moreover, the clear impression given in the advertisement is that the said orange bar of soap has been taken out from a green wrapper/packaging. It must also be noted that the design of the plaintiff's soap has been registered by the plaintiff as indicated by Ext. PW1/DX-1. While it is true that there may be other orange coloured soaps and other soaps sold in the predominantly green packaging and other soaps which have an oval shape, it is also true that it is only the plaintiff's soap which has a combination of all the three elements, i.e., orange colour, curved oval shape and pre-dominantly green packaging. Apart from this, it is only the plaintiff's soap which has contours in the manner indicated in the bar of soap in the said advertisement. No evidence has been produced by the defendant to show that there is any ordinary antiseptic soap with the same combination of the

aforesaid elements of colour, shape, design and packaging. I have absolutely no doubt that the orange bar of soap shown in the advertisement refers to the plaintiff's DETTOL Original soap.”

It will also be relevant to refer to the observations of the learned single Judge, which read thus:

“26. In the case of disparagement, the one who disparages another's product, does not seek to make his product similar to the disparaged product, but to distinguish it from the disparaged product. The object of disparagement is to make the disparaged product appear to be as near or similar to the competitor's product. The comparisons, Therefore, in cases of passing off and in cases of disparagement are different. Consequently, the comparison must be from the perspective of an average person with imperfect recollection but, that person must be picked from the category of users of the product allegedly sought to be disparaged or slandered.”

12. Again in the case of *Glaxosmithkline Consumer Healthcare Ltd. v. Heinz India (P) Ltd.* (supra), the Delhi High Court had an occasion to consider the advertisement of the defendant therein promoting its product “Complan” on the ground that plaintiff's product “Horlicks” was sought to be disparaged. However, since in the said case the product which was sought to be disparaged was directly named, the said judgment would not be of much assistance so far as present case is concerned.

13. The Madras High Court, in *Annamalayar Agencies v. VVS & Sons Pvt. Ltd.* (supra) had an occasion to consider an advertisement wherein the plaintiff's product “Parachute Coconut Oil” was bottled in blue bottle, whereas defendant's product “VVD Gold Coconut Oil” was bottled in a green bottle. The advertisement No. 1 impugned in the said case shows two coconuts, one in green colour and another in blue colour and an actress wearing green dress appears on the scene and asks a

question “which is natural?”, and then she herself picks up a green coconut and says that it is natural. In advertisement No. 2, an actress wearing green dress picks up one of the green colour plastic bottles of VVD arranged in a shelf and says this is 100% pure and natural and this is what I want. Then the next shot shows an actress wearing green dress in the foreground and the lady wearing blue saree in the background. The lady wearing blue saree has a blue colour bottle in her left hand and a VVD bottle in her right hand. She looks at the blue bottle which is in her left hand and shakes her head disapprovingly and puts the bottle down. Then she looks at the VVD bottle in the right hand and lifts the bottle up and says VVD Gold, this is what I want. The learned Judge, observed thus:

“33. Insofar as advertisements 2 and 3 are concerned, they definitely refer to a plain unnamed blue bottle and drives home a message that the blue bottle does not contain 100% pure and natural coconut oil whereas the 1st Defendant's product alone contain 100% pure and natural coconut oil. It is one thing to say that the 1st Defendant's product alone is 100% pure which is not actionable and it is another thing to say that the Plaintiffs product is not 100% pure which is actionable.

37. The 3rd advertisement also goes to show that the general public not picking the blue bottles stacked in the shelf whereas the 1st Defendant's product are being grabbed with enthusiasm and swiftness. This definitely would send a wrong message to television viewers and the buyer of the coconut oil that the blue bottle products are inferior to that of green bottle products of the 1st Defendant, which is nothing but openly disparaging the product of the Plaintiff.”

14. The Calcutta High Court in the case of *Reckitt & Colman of India Ltd. v. M.P. Ramchandran* (supra) had an occasion to consider the advertisement wherein the product of the plaintiff “Robin Blue” was sought to be disparaged by the defendant who was manufacturing the product whitener under the brand

name “Ujala”. In the said advertisement, the product whitener in the bottle of dispenser with the word “blue” printed on it was disparaged by showing disadvantages of the said product. It was the case of the defendant therein that the plaintiff's product was Robin Liquid Blue whereas the bottle of which dispenser was shown was an ordinary bottle of blue as such it was not disparaging the product of the defendant. The learned judgment observed thus:

“Therefore, in a suit of this nature one has to look at whether the advertisement merely puffed the product of the advertiser or in the garb of doing the same directly or indirectly contended that the product of the other trader is inferior. There cannot be any dispute that in the concerned advertisements blue was stated to be of inferior quality. Although, for having depicted the container and the price in the advertisement together it is difficult to proceed on the basis that the defendant No. 1 was not referring to Robin Blue, but assuming in the advertisement insinuations are not made against Robin Blue and the same were directed to all blues as has been stated in no uncertain terms in the affidavits, can it be said that it was not made against Robin Blue? The answer is a definite “no”, because Robin Blue is also a blue.

It was sought to be contended that insinuations against all are permissible, though the same may not be permissible against one particular individual. I do not accept the same for the simple reason that while saying all are bad it was being said all and everyone is bad and anyone fitting the description of everyone is affected thereby.

In the instant case the object of the advertisement was to convey to the customers of the blue including those of the plaintiff that if you use blue to whiten your washed clothes you will get washed clothes with blue patches. This could not be done.”

15. In so far reliance placed by learned counsel for the defendant No. 2 on the judgment of the Division Bench of the Delhi High Court in the case of *Dabur India Ltd. v. Colortek Meghalaya Pvt. Ltd.* (supra) is concerned, in the said case the Division Bench was considering an appeal against the order of learned single Judge refusing to grant injunction in favour of the plaintiff therein. It was the contention of the plaintiff that the defendants while promoting their product Good Knight Naturals mosquito repellent in the advertisement were disparaging the plaintiff's mosquito repellent under the brand name Odomos Naturals. The Division Bench observed thus:

19. Having said this, we are of the opinion after having gone through the commercial not only in its text (as reproduced above) but also having watched it on a DVD that there is absolutely nothing to suggest that the product of the Appellant is targeted either overtly or covertly. There is also nothing to suggest that the commercial denigrates or disparages the Appellant's product either overtly or covertly. There is also no hint whatsoever of any malice involved in the commercial in respect of the Appellant's product - indeed, there is no requirement of showing malice.

20. Learned Counsel for the Appellant submitted before us that since his client has over 80% of the market share in the country and a 100% market share in some States, the obvious target of the commercial is the product of the Appellant. In our opinion, this argument cannot be accepted. The sub-text of this argument is an intention to create a monopoly in the market or to entrench a monopoly that the Appellant claims it already has. If this argument were to be accepted, then no other mosquito repellent cream manufacturer would be able to advertise its product, because in doing so, it would necessarily mean that the Appellant's product is being targeted. All that we are required to ascertain is whether the commercial denigrates the Appellant's product or not. There is nothing in the commercial to suggest a negative content or that there is a disparagement of the Appellant's

product. The commercial merely gives the virtues of the product of the Respondents, namely, that it has certain ingredients which perhaps no other mosquito repellent cream has, such as tulsi, lavender and milk protein. While comparing its product with any other product, any advertiser would naturally highlight its positive points but this cannot be negatively construed to mean that there is a disparagement of a rival product. That being so, whether the Appellant's product is targeted or not becomes irrelevant.

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

(emphasis supplied)

It can, thus, clearly be seen that in the facts of the said case, the Division Bench of the Delhi High Court has come to the specific conclusion that the advertisement in question did not directly or indirectly, deliberately disparage the plaintiffs product, as such the said case would be of no assistance to the case of the defendants.

16. In so far as order of Delhi High Court in the case of *Hindustan Unilever Ltd. v. SC Johnson & Sons*(supra), the Court has clearly come to the conclusion that when cleaning action is actually shown in the advertisement, an orange bottle of the respondents or the similar orange bottle of some other manufacturer was not shown but, in fact, a completely different blue bottle was shown. In this background, the Division Bench found that there was nothing in the advertisement to suggest that the product of the respondents was in any manner disparaged or shown to be inferior to the product of the appellants. In the circumstances, the order of injunction granted by the learned single Judge was reversed.

17. It can, thus, clearly be seen that it is a settled position of law that a a tradesman is entitled to declare his goods to be best in the world, even though the declaration is untrue. He can also say that his goods are better than his competitors, even though such statement is untrue. He can also say that his product is best in the world or better than his competitors' and also can compare the advantages of his product over the products of the others. However, while doing so, he cannot say his competitors are bad and, if he does so, he really slanders the goods of his competitors and defames his competitors and their goods which is not permissible and only in such a case the Court would be competent to grant order of injunction restraining repetition of such defamation.”

“18. It is equally settled that to decide the question of disparagement, the following factors are to be kept in mind:

- (i) Intent of commercial
- (ii) Manner of the commercial

- (iii) Storyline 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 condemning product of the competitor then it amounts to disparaging but if the manner is only to show one's product better or best without derogating other's product then that is not actionable.”

It could thus be seen that for deciding the question of disparagement, Court will have to take into consideration intent of the commercial, manner of the commercial and storyline of the commercial and the message sought to be conveyed by the commercial. We will also be required to consider as to whether manner of the commercial is ridiculing or condemning product of the competitor, to come to the conclusion that it amounts to disparagement. However, if manner of the commercial only shows advertiser's product better or best without derogating the other's product then the same would not amount to disparagement.

25] We have reproduced hereinabove paragraphs from the impugned judgment and order of the learned Single Judge, in which

meaning of the commercial and graphic of the commercial has been considered. From the perusal of TVCs, it is clear that the manner in which the advertisement is aired, the message that is sought to be given is that the frozen desserts are manufactured by using only Vanaspati tel i.e. hydrogenated vegetable oil, which is harmful for the health. It is relevant to note from the pleadings of the Appellant, that Appellant itself has not disputed that the Vanaspati is harmful for health. It will be relevant to refer to some of the averments made in para 18 of the affidavit in reply filed by one Sameer Nagle on behalf of Defendant No.1, which read as under:-

“18.....I say that oil necessarily is in liquid form and fat in solid form. I say that it is an admitted position that some Frozen Dessert manufacturers use Hydrogenated Vegetable Oil or Vanaspati.....”

It is an admission of the Appellant that oil necessarily is in liquid form and fat in solid form. When it is admitted by the Appellant that, what is used by the majority of the manufacturers of frozen dessert, is vegetable oil, then we do not understand as to how the Appellant can

justify showing chunks of semi-solid substance in murky colour, falling in the Cup of frozen dessert. It is clear that what is sought to be depicted is that the frozen desserts are made out of hydrogenated vegetable oil i.e. “Vanaspati”, which is in semi-solid form. It will also be relevant to refer to some of the the averments made in para 21 of the said affidavit, which read as under:-

“21.....I say that Defendant No.1 has only sought to inform and educate the consumers. I say that even Advertisement is a commercial speech recognized under Article 19(1)(g) of the Constitution of India. What Defendant No.1 is doing and has been doing is to make the consumers aware of the actual difference between the Ice-cream and a Frozen Dessert. I say that what Defendant No.1 is doing is perfectly legal. I say that it is an admitted position that 30% manufacturers of Frozen Desserts use hydrogenated fat or hydrogenated vegetable oil ordinarily known as Vanaspati. I say that it is also an admitted position that Vanaspati has harmful effects. I say that therefore, the large red wrong tick on Frozen Desserts is merely to educate the consumers that Frozen Desserts containing hydrogenated

fat or hydrogenated vegetable oil ordinarily known as Vanaspati or even Edible Vegetable Oil is not Ice-cream as portrayed by some manufacturers.....”

(Emphasis supplied)

It could thus be seen that, even according to the Appellant, 30% of the manufactures of the frozen desserts use hydrogenated fat or hydrogenated vegetable oil which is ordinarily known as Vanaspati. As such, even according to the Appellant also, 70% of the manufacturers of the frozen desserts, do not use Vanaspati or hydrogenated vegetable oil. It could further be seen that it is clearly admitted by the Appellant that Vanaspati has harmful effects. No doubt that, Appellant has sought to justify that the advertisement has been aired only to educate the consumers with regard to disadvantages of frozen desserts, which contain hydrogenated fat or hydrogenated vegetable oil ordinarily known as Vanaspati. What the Appellant desires to convey by the impugned TVCs is that, all manufacturers of Frozen Desserts, including the Plaintiff, use Vanaspati i.e. hydrogenated vegetable oil in manufacturing of its product. The said message is false to the knowledge of the

Appellant. The Appellant has again reiterated in subsequent paragraphs about the fact of Vanaspati i.e. hydrogenated vegetable oil being harmful to health. However, we do not want to burden our judgment by reproducing the repeated averments.

26] It could thus be seen that, even according to the own admission of the Appellant, hydrogenated fat or Vanaspati has harmful effects on the health. If, with this knowledge, the Appellant has aired the impugned advertisement, showing that all the manufacturers of frozen desserts use Vanaspati or Vanaspati tel, there can be no manner of doubt that intent of the advertisement is to show that Frozen Desserts are manufactured by using Vanaspati and that the said products which are manufactured with the use of Vanaspati are dangerous to the health. We have no manner of doubt, to hold that TVCs have an effect of disparaging the frozen desserts in general and dissuading the class of consumers from using it. As held in catena of cases, Appellant can verywell make a false claim to puff up their product. It can also make statements which are not true to its knowledge to show how its product is superior. It can even compare its products with the competitors. However, the Appellant cannot be

permitted to air the advertisement which disparages the product of its competitors.

27] Having arrived at a finding that the impugned TVCS are in the nature of disparaging the frozen desserts, we will deal with judgments on which reliance is placed by Mr. Kadam.

28] Insofar as the judgment in the case of *Reckit Benckisher (India) Limited vs. Naga Limited and Ors*¹² is concerned, the relief is refused to the Plaintiff therein basically on the ground of conduct of the Plaintiff. In the said case, the Plaintiff had not disclosed about the complaint filed by it before ASCI and rejection thereof. According to Mr. Kadam, in the present case also, there is similar situation. However, we have perused the averments in the plaint and in the plaint, there is a specific reference to the proceedings before ASCI. In that view of the matter, we find that the said judgment would not be applicable to the facts of the present case.

29] Again, in the case of *Godrej Sara Lee Ltd. vs. Reckitt*

¹²ILR (2003) I DELHI 325

*Benckiser (I) Ltd.*¹³, the Court has referred to the judgment of Calcutta High Court in *Reckitt & Colman of India Ltd. vs. M.P. Ramchandran and Anr* reported as 1999 PTC (19) 741, which has laid down the principles on which action on the basis of disparagement could be based. As discussed hereinabove, if the advertisement had restricted itself to puffing up the product of the Appellant or showing its product to be the best one or rested on comparing its product, there would have been no issue. However, the advertisement shows that, it had not stopped at that and the Appellant has shown the product of the Plaintiff in poor light, and has attempted to show that frozen desserts were harmful to health. As such, the said judgment would also not be applicable to the facts of the present case.

30] In so far as reliance placed by Mr. Kadam, on the Judgment of Delhi High Court in *Dabur India Ltd vs. Colortek Meghalaya Pvt. Ltd. & Anr.*¹⁴ is concerned, it will be relevant to refer to para 14 of the said judgment which reads as under:-

“14. On the basis of the law laid down by the

13 2006 (32) PTC 307 (Del)
14 2010 SCC OnLine Del 391

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.”

It could thus be seen that the said judgment rather than supporting the case of the Appellant, would support the case of the Plaintiff, inasmuch as, it clearly holds that the advertisement must not be false, misleading, unfair or deceptive. The Delhi High Court further held that protection of Article 19(1)(a) is available to the advertisement. However, if an advertisement extends beyond grey areas and becomes a false, misleading, unfair or deceptive advertisement, it would certainly not have the benefit of any protection. It has further been held by Delhi High Court that while comparing its product with other products, the advertiser may only highlight its positive points, but this cannot be negatively construed to mean that there is a disparagement

of a rival product. It has been further held that while hyped-up advertising may be permissible, it cannot transgress the grey areas of permissible assertion, and if it does so, the advertiser must have some reasonable factual basis for the assertion so made.

31] So far as the other judgments of the Delhi High Court are concerned, the said judgments are delivered by the learned Single Judges of the Delhi High Court. We have already referred to the view taken by Division Bench of the Delhi High Court and as such, we do not find that reference to all the judgments of the learned Single Judges of that Court would be necessary.

32] In that view of the matter, we are of the considered view that the view taken by the learned Single Judge to arrive at a finding that the impugned TVCs are in the nature of disparaging the frozen desserts, in which market the Plaintiff has substantial share and as such, the Plaintiff is entitled to injunction, does not warrant interference.

33] The only question that we are now required to consider is, as to whether the extent of injunction as granted by the learned Single Judge is warranted in the facts of the present case or not.

34] The learned Single Judge has granted twofold injunctions. In clause (i) of the operative part of the judgment, he has restrained the Appellant from telecasting or broadcasting or otherwise howsoever communicating to the public or publishing the impugned TVCs or any part thereof or any other advertisement of a similar nature in any language or in any manner causing the impugned TVCs or any part thereof or any other advertisement of a similar nature to be telecast or broadcast or communicated to the public or published in any manner.

35] We are of the view that such a blanket injunction could not have been granted by the learned Single Judge. Perusal of the advertisement would reveal that, entire TVC cannot be said to be of objectionable nature. The learned Single Judge has reproduced the snap-shots of advertisement in detail, in para 10. We find that insofar as the first TVC is concerned, the snap-shots from 'A' to 'G'

cannot be said to be disparaging the product “Frozen Desserts”. At the most, what could be said is that the Appellant is trying to highlight the benefits of its product or puff it up or try to show that it is the best one. The message sought to be given is that, the product of the Appellant is made of pure milk and therefore only such product should be given to the brave girls like Shriya. As already held hereinabove, Appellant is entitled to show its product in highest esteem and no one could have objection to that. However, from snap-shots 'H', 'I' and 'J' read in conjunction with 'H' and 'I', an attempt is not only made to compare the product of the Appellant with frozen desserts, but message is sought to be given that entire class of frozen desserts is made using only Vanaspati i.e. hydrogenated vegetable oil and that consumer should have only ice creams and not the Frozen Desserts. In that view of the matter, we find that insofar as the first TVC is concerned, the injunction could have been granted only to part beginning from snap-shots 'H' to 'J'.

36] Similarly, insofar as second TVC is concerned, there could be no objection in respect of snap-shots 1 to 7, which are on similar lines with snap-shots 'A' to 'G' in first TVC. However, snap-shots 8 to

10 are similar with snap-shots 'H' 'T' and 'J' in the first TVC which attempt to disparage the Frozen Desserts.

37] We further find that the width of the injunction granted in impugned judgment and order, by using the word “similar” is also likely to create complications. We are of the considered view, that the injunction should have been granted only insofar as the part which is found to be disparaging and the word “similar” should have been used in the context of parts which are found to be disparaging. We therefore find, that clause (i) of the operative part of the impugned judgment needs to be modified.

38] Insofar as clause (ii) of the operative part of the impugned judgment is concerned, the learned Single Judge has enjoined the Defendant No.1 from disparaging or denigrating the Plaintiff's KWALITY WALL'S products (including Frozen Desserts manufactured or sold under the said brand and sub-brands thereof) or the Plaintiff's business in any manner whatsoever. We are of the considered view that the said part of the injunction travels beyond the scope of the Notice of Motion as well as the suit. The suit has basically impugned

two TVCs. There is no pleadings or material placed on record that the Appellant, in any manner whatsoever, is doing an act, except the said TVCs, which is disparaging or denigrating Plaintiff's product including frozen desserts etc. Nothing is placed on record to show that the Appellant is doing anything so as to disparage or denigrate the Plaintiff's business. The only averments in the plaint are with regard to disparaging effect of the impugned TVCs. We are of the considered view that the learned Single Judge should have restricted the injunction only insofar as subject matter which was impugned before him. We are of the view that such a wide relief could not have been granted without there being any pleadings or material in support thereof. In that view of the matter, we find that injunction insofar as clause (ii) of the operative part of the impugned judgment and order is concerned is not sustainable in law.

39] In the result, appeal is partly allowed in the following terms:-

(I) Finding of the learned Single Judge that TVC-1 and TVC-2 amounts to disparaging frozen desserts is upheld, however with modification that, parts from snap-shots 'H'

to 'J' in the first TVC and parts from snap-shots 8 to 10 in the second TVC are only found to be disparaging frozen desserts.

(II) The Appellant would be free to use the said TVCs after deleting the portion, which has been found to be disparaging the product Frozen Desserts i.e. snap-shots 'H', 'I' and 'J' in the first TVC and snap-shots 8 to 10 in the second TVC.

(III) The word “similar”, which has been used in clause (i) of the operative part of the order of the learned Single Judge is clarified to be 'as similar' to the parts of the advertisement which have been found to be disparaging the product Frozen Desserts.

(IV) Clause (ii) of the operative part of the impugned judgment of the learned Single Judge, is quashed and set aside.

40] Since the Appeal is partly allowed and disposed of, nothing survives in the Notice of Motion taken out therein and the same is accordingly disposed of.

41] Before we part with this judgment, we place on record our appreciation for the valuable assistance rendered by Mr. Kadam, the learned Senior Counsel for the Appellant and Mr. Chinoy, the learned Senior Counsel for the Respondent No.1.

(RIYAZ I. CHAGLA J.)

(B. R. GAVAI, J.)