National Consumer Disputes Redressal Commission

(Bench: S.N. Kapoor, Presiding Member & B.K. Taimni, Member)

United Breweries Limited (Appellant)

Versus

Mumbai Grahak Panchayat (Respondent)

First Appeal No. 491 of 2005

dated September 4, 2006

S.N. Kapoor, Presiding Member:

1. On the complaint of Mumbai Grahak Panchayat, Maharashtra State Commission issued following direction to the appellant:

> "*1. O.P. Nos. 1 and 2 are hereby directed to prominently display the corrective advertisements as given below for the period of one week on coaches of Western Railway at their cost:*
>
> *"Keep Liquor Away from Young Generation"*
>
> *"India's No. 1—Only Natural Fruit Drink"*
>
> *"Limbu Paani, Nariyal Paani, Yehi hai Apna Alag Andaz:*"

2. Feeling aggrieved by the said order, the appellant has filed this appeal.

3. Mumbai Grahak Panchayat filed a complaint against the appellant as well as Western Railway for having adopted Unfair Trade Practices in prominently displaying / exhibiting false, misleading and surrogate Liquor Advertisements on the coaches of the Western Railway trains and to seek discontinuance of the same along with corrective advertising by the opposite parties to neutralise the effect of the said advertising and punitive damages.

4. United Breweries manufactured Bagpiper, London Pilsner and Derby Special Whisky and Beer. The said advertisement made a claim of "India's No. 1 and the World's No. 3". This description matches with the 'Bagpiper Whisky' and not "Bagpiper Soda". There was no Bagpiper Soda in the market. The second advertisement is of "London Pilsner Soda" describing 250 ml. Pint "Soda" available for Rs. 16 and on inquiry, it was stated that 'London Pilsner' has come out with 250 ml. bottle of Beer. The complainant's volunteers had purchased a bottle of 250 ml. London Pilsner Soda beer costing Rs. 16. London Pilsner Advertisement of Railway trains proclaimed "Ab Cold Drink Out". An attempt was made to substitute Cold Drinks with Beer. This was an attempt to induce the young generation to switch over from Cold Drinks to Beer. There was third advertisement of "Derby Special Soda". On inquiry, it was found that there

was no Derby Special Soda anywhere in the market and there was "Derby Special Whisky" available with Wine Dealers. These attempts were highly objectionable, deplorable and also patently illegal. Liquor advertisement is prohibited in Maharashtra as per Section 24 of Bombay Prohibition Act.

5. The complainant approached the Railway Authorities but they did not pay any heed to their request for stopping the advertisement on the ground that agreements had already been executed.

6. Feeling dissatisfied with response, the complaint was filed before the State Commission against the appellant and Western Railways seeking discontinuance of Unfair and Deceptive Trade Practice of displaying / carrying the impugned advertisements of Bagpiper, London, Pilsner and Derby Special Soda from Western Railway trains.

7. In so far as Railways are concerned, they clarified in para 6 of their reply that advertisement of London Pilsner Pint Glass, Derby Special Soda and Bagpiper Soda have been removed from the coaches of Western Railway Trains. Learned Advocate, Mr. S.M. Sayed appearing for Railway Administration submitted before the Maharashtra State Commission that work of removal of advertisements had already been completed and further that thereafter Railways would not itself or through its agent permit publication / printing or display of such advertisements either on the Railway coaches or even on the Railway Platforms. Railway administration had also formulated General Policy Guidelines for Commercial Advertising. Guideline 9.0 provides for display of advertisement. Guideline 9.5 clearly prohibited the advertisement of alcoholic drinks and various types of drugs and those prohibited by Railway Board from time to time. Guideline 9.5.6 regulates surrogate advertisements also.

8. Issue with regard to impugned advertisements of Bagpiper Soda, London Pilsner was also taken to the Advertising Standards Council of India. The complaint with regard to London Pilsner was upheld by the Advertising Standards Council of India and the Council held that the advertisement is misleading by ambiguity since the headline, "Ab cold drink out" and the claim of "Rs. 16 only Rs. 3 refundable deposit", is not supportive of the product mentioned—'pint glasses', and contravened Chapter 1.4 of Advertisement Code. The Council further held that the advertisement is surrogate advertisement for an alcoholic beverage brand and contravened Chapter III.6 of the Advertisement Code. Written request was also made to the Advertiser to withdraw the advertisements.

9. Similarly, complaint against Bagpiper Soda was also upheld. The mention of the word "Soda" in an inconspicuous manner, while boldly stating the brand name "Bagpiper" with the baseline, "India's largest, World's No. 3", was misleading by its ambiguity and contravened Chapter 1.4 of the Advertisement Code. It is further held that the advertisement is surrogate advertisement for an alcohol produce brand and contravened Chapter III.6 of the Advertisement Code. Similar request was also made to the Advertiser to withdraw the advertisement.

10. On recommendation of the Central Consumer Protection Council, the Consumer Affairs, Food and Public Distribution Department, Government of India has set up a working group on "Misleading Advertisements" to address various problems that consumers face with regard to misleading advertisements. There is specific clause in the Consumer Protection Act, 1986, Section 14(1)(hc):

> "to issue corrective advertisement to neutralise the effect of misleading advertisements at the cost of the opposite party responsible for issuing such misleaing advertisements."

11. The State Commission in the light of the evidence on record took the view that Railway Department had contravened its own guidelines. O.P. No. 2 issued surrogate advertisements for liquor. Both the parties are responsible, for misleading and surrogate advertisements and both were held liable to issue corrective advertisement and after referring the Australian Competition and Consumer Commissions order, issued the above mentioned direction for prominently displaying the corrective advertisement mentioned herein above.

12. The appellant feeling aggrieved by the Order of State Commission has filed this appeal and contends that legal standards required for corrective advertisements would relate to factual perquisites.

(1) That the impugned advertisement has created or reinforced a "false belief" regarding the product advertised; and

(2) Such false belief prevails at the time of the order and will linger on in public mind unless it is remedied by corrective advertisement.

13. It is also submitted that the complainant has failed to prove either of two perquisites for want of evidence. Such a remedy being extraordinary, it was not warranted since the objectionable advertisement campaign had already ceased on 27.3.2004 more than 17 months prior to the passing of the impugned order. As such, false belief would no more be existing at the time of the passing of the order which required to be "neutralised" or corrected through corrective advertisement. The advertised products in question were soda and glasses and the advertisement of these did not violate any law whatsoever.

14. Section 24 of the Bombay Protection Act, the Cable Network Act, ASCI Code or the Railway Guidelines for commercial advertising, all prohibited the advertisement of "liquor" or "intoxicants". However, it was submitted that 'Soda' is not covered by either of these prohibitions and hence the impugned advertisement was not violative of any law.

15. We have heard the learned Counsel for the parties at length and gone through the record.

16. In so far as question of advertisements is concerned, the advertisements have not been disputed. In so far as the evidence relating to false advertisement is concerned, there is affidavit of Mrs. Anuradha Deshpande indicating that neither she nor any of

her volunteers could get “Soda” with Brand name of either Bagpiper or London Pilsner or Derby Special. On her visit to Wine Shops, she was told that there was no Soda available in the name of either Bagpiper or London Pilsner or Derby Special. She further stated that there was no London Pilsner beer bottle costing Rs. 19 with the Company's offer to refund Rs. 3 on returning the empty bottle, thus making the net price of London Pilsner Beer Bottle at Rs. 16, which exactly matches with the price offer of Rs. 16 for London Pilsner “Soda”. She also averred that her further inquiries confirmed that there was no “Soda” bottle or pint of 250 ml. costing Rs. 16. She said that she had bought a 250 ml. London Pilsner Beer Bottle by way of proof. Normally the real “Soda” bottles cost Rs. 6 or so and not more.

17. Only the appellant claimed to have entered a Technical Know-how agreement with Iceberg Food Limited for manufacture of ‘London Pilsner’ Soda. The question is not that London Pilsner Soda was not being sold, the question is whether bottle of beer was sold in the name of London Pilsner Soda; whether it was Soda or in the name of Soda, something else was being sold. According to the complainant, this was not a Soda but a bottle of beer.

18. Further, the complaint with regard to London Pilsner was upheld by Advertising Standards Council of India for the advertisement was misleading by ambiguity since the headline, “Ab cold drink out”, and the claim was of Rs. 16 only, Rs. 3 refundable was not being supportive of the product mentioned. The Advertising Standards Council of India has held as under:

> “*Bagpiper”*: The complaint was upheld. In the absence of comments from the advertiser, the CCC deliberated on the complaint, and concluded that—
>
> > the mention of the word ‘Soda’, in an inconspicuous manner whilst boldly stating the brand name “Bagpiper”, with the baseline, “India's largest, World's No. 3”, was misleading by its ambiguity, and hence contravened Chapter 1.4 of the Code.
> >
> > the advertisement appeared to be a surrogate advertisement for an alcohol product brand, and hence contravened Chapter III.6 of the Code.
>
> We had written to the Advertiser to withdraw the said advertisement, to which we are awaiting their response.”

19. “Ab cold drink out” was certainly misleading for soda could not be a replacement of ordinary cold drinks. It may further be mentioned that London Pilsner Brand is famous in England and it was bottle of Beer. It could not be said that there was no (sic.) of Bombay Prohibition Act. The prohibition has been imposed in the interest of the consumers and in the aforesaid circumstances; by seeing this kind of advertisements, the appellant was indulging in unfair trade practices.

20. Now coming to the ‘Bagpiper Soda’, the ad made a claim of “India's No. 1 and World's No. 3”. This description matches with the Bagpiper whisky and not Bagpiper Soda. There was no Bagpiper Soda available in the market. Similarly, the third ad of Derby Special Soda again reveals that there was no Derby Special Soda available in the

market but there was Derby Special Whisky available with wine dealers. Nothing else excepting the appellant could produce the same and sell in view of the agreement admittedly entered by the appellant. The same is shown on Bagpiper Soda as well as that only Derby Whisky was available. In respect of this, the advertisements relating to 'Soda' in an inconspicuous whilst boldly stating the brand name of Bagpiper Pilsner with the claim "India's No. 1 and World's No. 3" was misleading by its ambiguity and hence contravened Chapter 1.4 of the Code and it was found by the Advertising Standards Council of India.

21. The fact that the appellant is not pursuing with the advertisements and the fact that there was no such fact now to neutralise the effect of misleading advertisement, is not just a matter, which should be considered only from the point of view of the appellant and not from the point of view of young consumers, who have comparatively sharp memories, and whose mind is easily impressed particularly with foreign names and foreign brands. An advertisement on Railway coaches has much more potential to impress the minds of not only young generation but also sometime impresses the persons, who would have travelled by such coaches and would have seen it. We will have to take note of the fact that even young kid of 14 or 15 years who has attended 9 or 10 standard would have been influenced by surrogate advertisement. The memories are not easily washed out. This is one aspect.

22. Another aspect is that the appellant, who has taken advantage of unfair trade practices by publishing surrogate advertisement should not be absolved from its liability to issue corrective advertisement to neutralize the effect of misleading advertisements.

23. As regards exact advertisement, which is required to be published by way of corrective measures, there could not be a dispute about line No. 1, which reads that "KEEP LIQUOR AWAY FROM YOUNG GENERATION." As regards the following two lines *i.e.* "INDIA'S NO. 1 — ONLY NATURAL FRUIT DRINKS, LIMBU PAANI, NARIYAL PAANI, YEHIHAI APNA ALAG ANDAZ", there could be some perceptional difference of poor, middle and rich class of persons.

24. It is to be seen by keeping focus on young persons of poor, middle class as well as rich segment of our society, who would see it repeatedly whenever they travelled and had occasion to see it. There could not be any dispute that corrective advertisement as has been directed by the State Commission is absolutely justified.

25. Learned State Commission has referred to a precedent of Australian Competition and Consumer Commission whereby the Australian Competition and Consumer Commission ordered the Commonwealth Bank of Australia, who contravened the Trade Practices Act, 1974, to publish television and in-branch corrective advertisements. The matter went up to the Federal Court and the Federal Court made following orders about the form and scope of the corrective advertising:

> "(1) In-branch-Corrective posters to be displayed near the front of every branch of the bank for one week.

(2) Television-Corrective advertising to be aired on 18 occasions in Brisbane, Sydney, Melbourne, Adelaide, Perth and regional Australia.

(3) The orders show that misleading advertising can be costly. An advertiser may have to correct that advertisement at significant cost. It pays for an advertiser to get the message right at the first time."

26. In the case in hand, the State Commission has not ordered the corrective advertisement by publishing the advertisement in T.V. probably thinking that the advertisements made on Railway Coaches and Railway Platform were sufficient. It has not been ordered to be placed on coaches for 3 months as the advertisement has been ordered to be displayed only for a week. Therefore, we do not feel that the State Commission has imposed any extra burden rather it is not appropriately commensurate to the harmful influence caused to the young minds by making surrogate advertisement.

27. For the aforesaid reasons, we feel that there is no force in this appeal and it is dismissed accordingly with cost of Rs. 5,000 to the respondent.