

HARSHADA H. SAWANT
(P.A.)

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

SUIT (L) NO.7756 OF 2026

Pepsico India Holdings Private Limited .. Plaintiff
Versus
Advertising Standards Council of India .. Defendant

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- Mr. Mustafa Doctor, Senior Advocate a/w. Mr. Dheeraj Nair, Mr. Hormuz Mehta, Mr. Ahsan Allana and Ms. Ridhima Sharma, Advocates i/by JSA for Plaintiff.

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CORAM : MILIND N. JADHAV, J.
DATE : MARCH 05, 2026

P.C.:

- 1.** Not on Board. Mentioned by way of filing praecipe dated 05.03.2026. Perused the praecipe.
- 2.** Heard Mr. Doctor, learned Senior Advocate for Plaintiff.
- 3.** At the outset, Mr. Doctor in his usual fairness persuades the Court to allow Plaintiff to implead ITC Limited as Defendant No.2 in the suit proceedings in view of the fact that order under challenge has been passed in Complaint filed by the said Company. Request made by Plaintiff is allowed. Necessary amendment for impleadment is permitted to be carried out within a period of one week from today. Reverification stands dispensed with.
- 4.** Plaintiff is a private limited Company into fast moving consumer goods. One of its product is a very popular product which is

known in the market as 'Kurkure Masala Munch'. Plaintiff is served with three communications beginning with order dated 25.02.2026 passed in review proceedings under the regulations of Advertising Standards Council of India Code (for short '**ASCI Code**') which is appended at page No.127. Plaintiff has been heard and Mr. Doctor has taken me through the proceedings.

5. It appears from the said order that a rival company of the Plaintiff namely ITC Limited is the complainant. Grievance of the said Company before the Council is that Plaintiff has made a claim by advertising its product 'Kurkure Masala Munch' with a label of '*UP ka no.1 Taste*'. There is also a disclaimer on the behind of the said product which *prima facie* states that the claim is based on an independent research conducted by NieslenIQ during 11.04.2025 to 20.04.2025. Complainant – ITC has however objected to the said claim.

6. After hearing both the sides, Defendant - Advertising Standards Council of India has passed the impugned order dated 25.02.2026 holding that while the advertiser has right to tout their research success, the phrasing must be representative of the actual data and has held that the claim as stated above is misleading by implication as it converts a narrow research finding into an absolute statewide superlative. However, there is no further direction issued in

the impugned order save and except it having accepted the recommendation to uphold the complaint but with the caveat that the advertiser is free to advertise its taste preference using more accurate, non-superlative language.

7. Nothing more than what stated hereinabove has been stated in the impugned order. The recommendation which has been upheld is found in the recommendation of the FTCP namely Fast-Track Complaints Panel, copy of which is appended at page No.119 and when read at page No.121 thereof. However, the impugned order does not give any further directions, except upholding the recommendation.

8. On the following day i.e. 03.03.2026, an email is received by Plaintiff's office / officer calling upon them to withdraw the claim as objected to across all media platforms, *inter alia*, and inform all mediat channels by 05.03.2026 i.e. today to discontinue the release of the said advertisement and ensure its implementation by 10.03.2026. Just a day prior to this communication dated 03.03.2026 which is received on email, the impugned order dated 25.02.2026 is served on Plaintiff.

9. Being aggrieved, the Plaintiff has filed the present Suit proceedings in a great hurry. At the ad-interim stage, Plaintiff has expressed three serious grounds of exigency. Firstly, Mr. Doctor would submit that the challenge to the upholding of the recommendation is

maintained on merits as it is based on a survey which is infact being upheld and duly acknowledged in the impugned order itself. Secondly, he would contend that the direction given to Plaintiff and in the manner in which it is given, it is reasonably impossible for the Plaintiff to comply with the same especially when in today's digital and marketing world, Plaintiff has already booked several slots pertaining to various hoardings and advertisement campaigns on media platform in the near future and that would harm the campaign and will be huge rather colossal loss to Plaintiff in that sense. Thirdly he would submit that communication dated 03.03.2026 itself states that the claim should be removed from the packaging material within a period of four months.

10. There is a subtle ambiguity in the direction dated 03.03.2026 in respect of removing of packaging material at page No.132. Be that as it may, considering the fact that there is a substantive challenge maintained to the impugned order which itself does not give any specific direction for removal, and those directions are contained separately in an email addressed by the Manager Complaints & Resolution of Defendant namely Ms. Shilpa Survase to the Officer of Plaintiff – Company, an arguable case has been made out for intervention at this stage by Mr. Doctor on the above three exigencies for grant of ad-interim relief. Considering the directions contained in the communication dated 03.03.2026, the same shall stand stayed for

a period of one week from today to enable the Court to hear both Defendants.

11. There is one arguable point which is pointed out by Mr. Doctor which appeals to the Court *prima facie* i.e. in paragraph No.11 on page No.130, the Authority has infact returned a finding stating that there is no doubt in its mind that the survey has established the fact that between the three products namely 'Kurkure, xxx, abc', the consumers who participated in the survey liked 'Kurkure' in taste and research opined the point that Kurkure was the preferred product as far as taste is concerned.

12. Needless to state that copy of this order shall be served forthwith on Defendant No.1 i.e. Advertising Standards Council of India and newly impleaded Defendant No.2 i.e. original complainant alongwith copy of all proceedings.

13. Both Defendants are directed to appear and apprise the Court accordingly on the next adjourned date.

14. Stand over to **09th March 2026**. To be placed under the caption '**For Directions**'.

15. Praecipe is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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