

Ajay

**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 and Anr. .. Defendants

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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.
- Mr. A.V. Chatuphale, Advocate appearing through Video Conferencing for Defendant No.1.
- Mr. Nikhil Mutha a/w. Mr. Nimish Kothare, Advocates i/by Nanu Hormasjee & Co. for Defendant No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 12, 2026.

P.C.:

1. I have heard Mr. Doctor, learned Senior Advocate for Plaintiff; Mr. Chatuphale, learned Advocate appearing through Video Conferencing for Defendant No.1 – ASCI and Mr. Mutha, learned Advocate for Defendant No.2 – ITC.

2. Mr. Mutha informs the Court that Mr. Kadam is appearing for Defendant No.2 – ITC Limited and he is in difficulty as he is presently appearing before another Court.

3. However I have impressed upon the learned Senior Advocate appearing for Plaintiff to answer certain questions posed by the Court

in order to persuade the Court to accept the case of Plaintiff. The said issues which are pointed out to Plaintiff pertain to the demographic and geographic nature of the territory in which the impugned survey was undertaken by the agency appointed by Plaintiff since it was restricted to only four cities namely Gorakhpur, Lucknow, Kanpur and Bareilly. This is because Uttar Pradesh being the most populous State of this Country has 75 districts and is divided into atleast 18 divisions for the purpose of administration with each division having atleast 5 – 6 small and big cities (thus totalling to approximately 85-95 cities).

4. That apart, the issue of sample size for Indian consumers of 204 persons per city/territory, that too in 4 cities only is something which needs to be addressed by the Plaintiff as concentration in the survey was in respect of age group of 13 to 35 years. *Prima facie* the sample size does not sound large to the Court. Further the issue of disclaimer needs to be addressed by Plaintiff in terms of its size and font being equivalent to the superlative claim of Plaintiff on the next adjourned date by placing a representative sample before Court, since from the coloured photo placed in the Suit plaint it is not ascertainable. It clearly appears that ASCI's expert advise of placing the disclaimer on the front side of the packet is also not adhered to by Plaintiff and it would be potentially contrary to ASCI guidelines, both on size and placement.

5. Though there is no specific single ideal sample size fixed by the ASCI guidelines and code, in the present case based on the Rule of thumb as per the Industry Standards and considering the demography of the State Uttar Pradesh having a population of approximately 29 Crores, the survey undertaken must represent the whole market in terms of due diligence and present survey may not be geographically and demographically representative of the superlative claim and the area. The above issues arise in the Court's mind which Mr. Doctor is required to address. Equally, Defendant No.1 – ASCI and Defendant No.2 – ITC Limited shall also address the Court on the above issues or on any other issues on merit on the next adjourned date. Interim relief Application will be heard and disposed of on the next date.

6. Any Affidavit-in-Reply to be filed by Defendants is directed to be filed forthwith or on or before the next date.

7. Stand over to **24th March 2026 at 04:00 p.m..**

8. In the meanwhile, ad-interim / interim relief, if any, granted earlier, is directed to be continued.

[MILIND N. JADHAV, J.]

Ajay

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by AJAY
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