



2024:DHC:7432



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

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Reserved on: August 30, 2024
Pronounced on: September 26, 2024

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CS(COMM) 684/2024

ZYDUS WELLNESS PRODUCTS LTD

.....Plaintiff

Through: Mr. Sagar Chandra, Ms. Shubhie Wahi
and Ms. Ankita Seth, Advocates

Versus

MR PRASHANT DESAI

.....Defendant

Through: Ms. Misha Rohatgi Mohta, Mr. Naul
Mohta, Mr. Munaf Virjee, Ms. Vidhi
Gupta, Ms. Riya Dhingra, Mr. Puneet
Pathak, Mr. Ayush Kashyap, Mr.
Amulya Upadhyay and Mr. Bharat
Monga, Advocates

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

I.A. 36293/2024 (*Stay*)

Narrative Background:

1. The plaintiff, *vide* the present application is seeking to restrain the defendant and all those acting on his behalf from infringing upon/ disparaging and/ or denigrating the mark namely 'COMPLAN'/ 'COMPLAN PISTA BADAM' registered in the plaintiff's name.



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2. When the suit, alongwith the present application, was listed for the first time on 13.08.2024, the defendant was duly represented by his counsel Ms. Misha Rohatgi Mohta. After hearing her for a good length and in view of the factual matrix involved, notice was issued to the defendant and time to file reply was given as under:-

“Considering that the posts made by the defendant involved in the present suit have been there on social media site ‘instagram’ since and from 27.02.2024, learned counsel for the defendant is granted three days for filing her reply to the present application as sought by her. Rejoinder thereto, if any, be filed within a period of two days thereafter.”

3. Subsequently, the defendant filed a ‘preliminary reply’ along with plethora of documents, *albeit* without an appropriate application seeking permission for bringing them on record. Needless to say, rejoinder thereto has also been filed by the plaintiff herein. It is, thereafter that this Court has heard the arguments advanced by both learned counsel for the parties *in extenso*.

4. The plaintiff, Zydus Wellness Products Limited, is one of the country’s biggest food and nutrition products company, leading brands include *inter alia* ‘COMPLAN’, ‘Nycil’, ‘Glucon-D’, ‘Sampriti’, etc. having adopted the mark ‘COMPLAN’ in the year 1956 through its predecessors and started using the same since the year 1994.

5. The plaintiff’s product ‘COMPLAN’ is considered to be one of the strongest brands associated with nutrition and health benefits and is sold under several variants and flavours, such as COMPLAN ROYALE



CHOCOLATE, COMPLAN KESAR BADAM, COMPLAN CREAMY CLASSIC, COMPLAN PISTA BADAM, COMPLAN NUTRIGRO (hereinafter “*COMPLAN family marks*”).

6. The plaintiff has acquired significant goodwill and recognition in the market *qua* the registered trademark ‘COMPLAN’ as also obtained registrations thereof and its variations in India under various Class(s) 5, 29, 30 and 32 as per details entailed in paragraph 5 of the plaint.

7. The plaintiff has been marketing and selling ‘COMPLAN PISTA BADAM’, which is one of the variants of ‘COMPLAN’ family marks of the plaintiff, since several decades. In fact, the trade dress of the said ‘COMPLAN PISTA BADAM’, despite going through minor modifications, has retained the essential features like the combination of colour(s) red, white and yellow, the depiction of the brand/ trademark ‘COMPLAN’ in white font, against a red background and the depiction of happy child/ children as under:-





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8. Since beginning, the plaintiff has spent tremendous time, effort and resources for promoting and marketing its registered trademark(s) 'COMPLAN' *via* different forms of media. Being one of the most iconic and popular brand in India, its 'COMPLAN' products enjoy a strong market presence and legacy and are inexorably and indelibly associated with the plaintiff and have formed an important recognition in the eyes of the consumer.

9. The plaintiff's goodwill and reputation can be further ascertained from the annual sales figures recorded against the plaintiff's products under the registered trademark 'COMPLAN'. The plaintiff has had ever growing net sales of Rs.44,764 lakhs for the financial year 2020-2021, Rs.43,787 lakhs for the financial year 2021-2022 and Rs.39,851 lakhs for the financial year 2022-2023. In addition, the plaintiff has also expended Rs.6,366 lakhs in the financial year 2020-2021, Rs.7,670 lakhs in the financial year 2021-2022 and Rs.6,882 lakhs in the financial year 2022-2023 for promoting the products under the said registered trademark 'COMPLAN'.



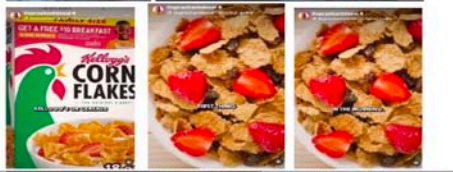
10. On 09.04.2024, the plaintiff came across a video dated 29.03.2024 (hereinafter "*impugned video*") on the social media platform *www.instagram.com* on the defendant's profile @*itsprashantdesai* wherein, as per plaintiff, the defendant has made disparaging, defamatory, denigrating and derogatory statements *qua* the product of the plaintiff under the registered trademark 'COMPLAN'. In fact, the said impugned video is *qua* three types of products, (a) Bournvita/ *Complan*/ Horlicks; (b) biscuits and Cookies; and (c) Kelloggs or Cereals and the product of the plaintiff under



the registered trademark ‘COMPLAN’ is one of them. The storyline of the impugned video, in a tabular form is reproduced herein below:-

FRAME/VISUAL DEPICTION	DIALOGUE & DESCRIPTION
	<p>The Impugned Video starts, with the Speaker saying, "Don't give these 3 foods to your kids ever."</p>
	<p>The speaker says "No.3 Bourvita, COMPLAN, Horlicks. Don't Mix them in the milk, in the morning for your kids."</p> <p>While the speaker makes the aforementioned statement, packaging of Bourvita, COMPLAN and Horlicks are shown on the screen, one after the other. Thereafter, a clipping of a third party advertisement is shown wherein milk is being poured in a cup and child is seen drinking the same, from a cup labelled 'Horlicks'.</p>
	<p>The Speaker further states "Why? 2 scoops contains 40-50 grams of sugar that's 200% of your kid's daily requirement of sugar".</p> <p>While making the aforementioned statement, a depiction of 2 spoons filled with powder can be seen on the top of the screen, with the words "2 scoops contains → 40-50gms of sugar", being displayed on the screen.</p>
	<p>The Speaker further states, "As you know, excess sugar, glucose spike, they will become hungrier, they will be crankier than they will want snacking."</p> <p>While the speaker states the aforementioned, there is depiction on the screen of sugar being mixed with blood and a picture of a Glucometer which shows a high sugar reading of 105. Another image of a small girl eating burgers and French fries can be seen on the screen.</p>
	<p>The Speaker continues saying "No.2, don't feed them biscuits and cookies."</p> <p>As the Speaker is saying this, images of children eating biscuits are depicted on the screen.</p> <p>The Speaker further states "Biscuit and cookies is nothing but maida, salt, palm oil and sugar."</p> <p>While the aforementioned statement is being made, images of maida, salt, palm oil and sugar are depicted on the screen.</p>
	<p>The Speaker further states "and yes, this includes nutritive biscuits, digestive biscuits, so called health biscuits, they are not healthy".</p>



	
	<p>The Speaker continues "No.1, don't feed them Kellogg's or Cereals first thing in the morning."</p> <p>While the aforementioned statement is being made, images of Kelloggs corn flakes is shown on the screen.</p>
	
	<p>The Speaker further states "Trust me Guys, that is again nothing but wheat coated with sugar so that your kid keeps having it, having it, having it. It has no nutritional value."</p> <p>A child can be seen pouring cereal out of a cereal box into a bowl as the Speaker speaks.</p>

	
	<p>The speaker further states "Even if you add raisins or some fruits to it, the sugar and the milk takes it all away".</p>
	
	<p>The Speaker ends the Impugned Video by saying "Don't feed these 3 to your kids, improve their health."</p>

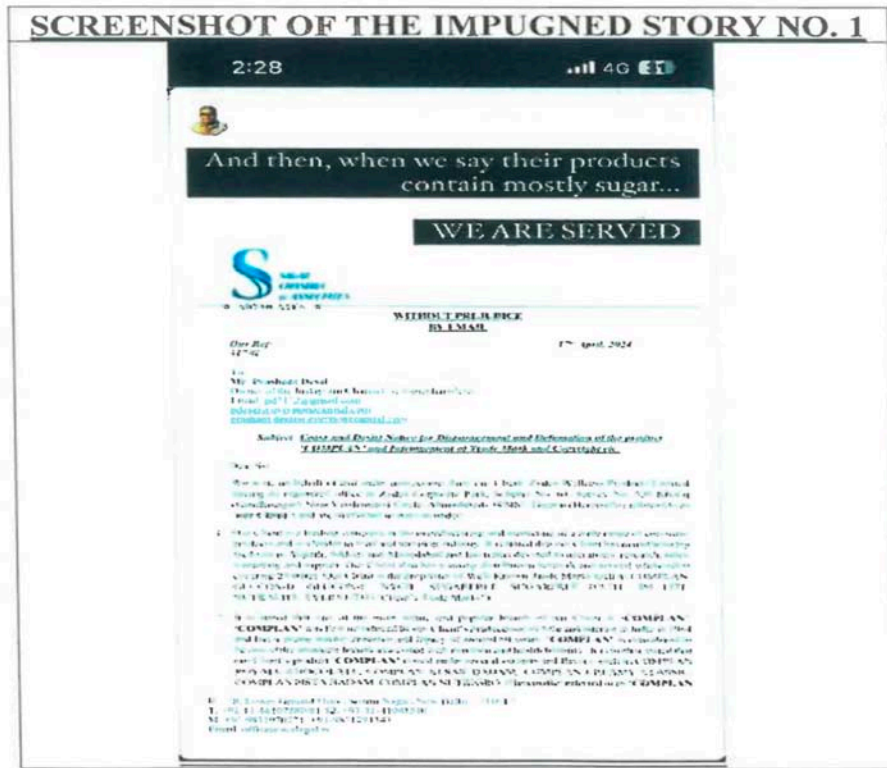


11. In continuation thereto, the impugned video is accompanied by a caption depicting as under:-

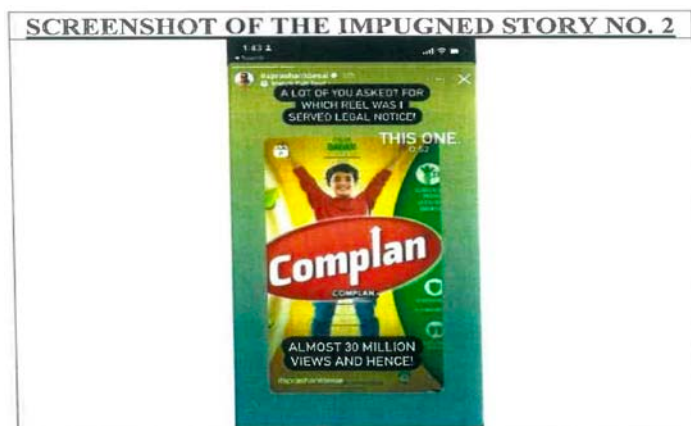


12. The above, as per plaintiff, amounts to outright and baseless rejection of the product of the plaintiff under the registered trademark ‘COMPLAN’ and are nothing but false, unsubstantiated, off the cuff and misleading statements, contrary to what was contained in the instructions on the packaging of the plaintiff’s ‘COMPLAN’. It is said that the defendant is thus actually playing with the emotions of parents.

13. Upon coming to know of the said impugned video, the plaintiff on the same day itself requested the defendant *via* direct message on Instagram and LinkedIn to remove the same. Receiving no response, it issued a Legal Notice on 17.04.2024 asking the defendant to immediately take down the impugned video. Instead of responding, the plaintiff was shocked to find that two days thereafter, on 19.04.2024, the defendant had posted on his Instagram profile as under:-



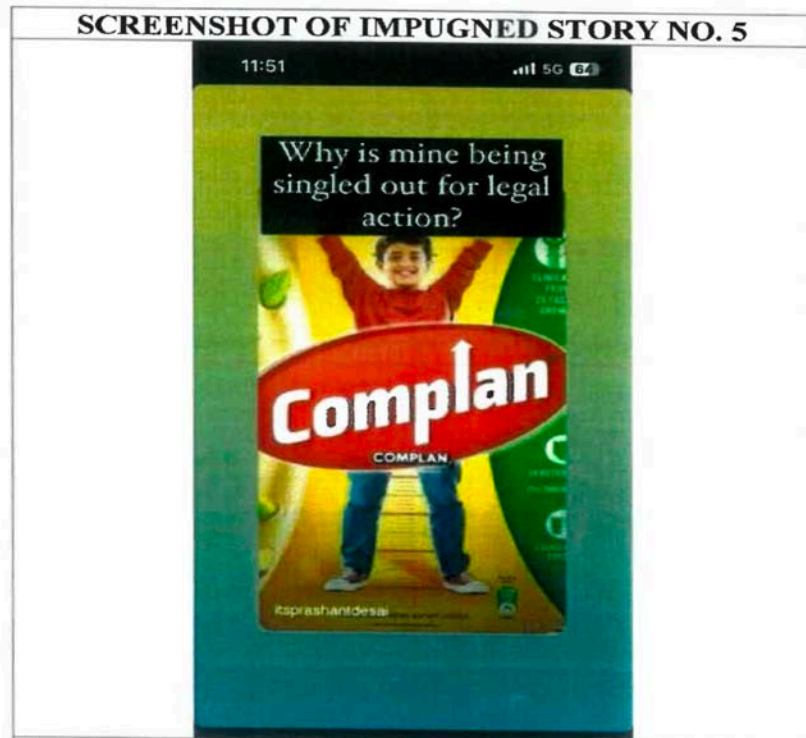
14. Not stopping, the defendant on 21.04.2024 again posted on his Instagram profile as under:-



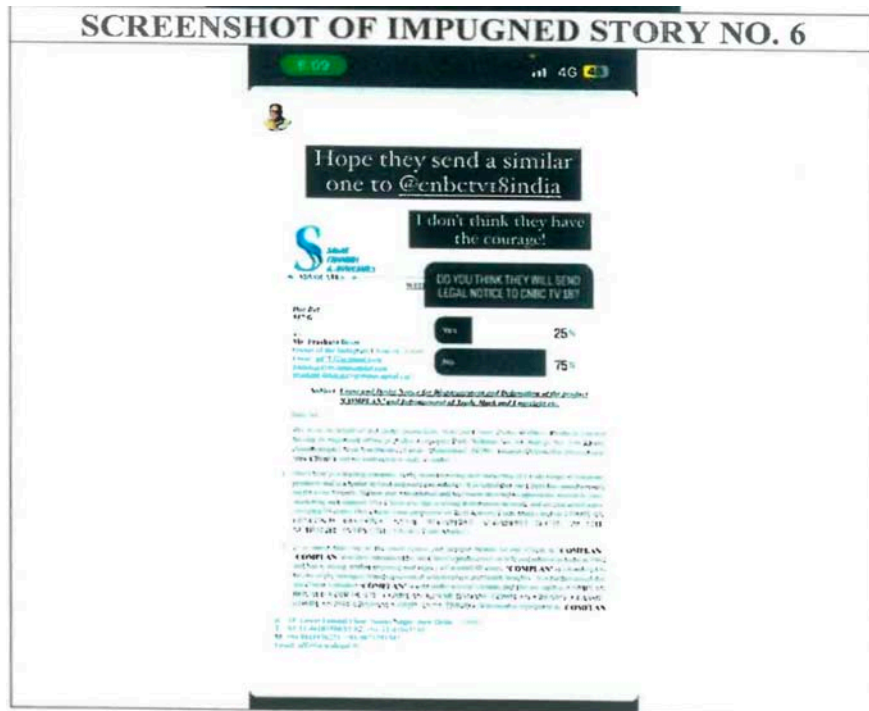
15. Thence, the defendant again on 25.04.2024 posted on his Instagram profile a series of stories with interactive captions, as under:-



SCREENSHOT OF IMPUGNED STORY NO. 5



SCREENSHOT OF IMPUGNED STORY NO. 6





Submissions of plaintiff:

16. The defendant has about one million followers on Instagram and 60,000+ followers on Facebook. Further, since the impugned video has already had approximately 3,49,02,025 views, 6,69,790 likes, 5,625 comments and 9,59,000 shares, it is evident of the widespread reach of the defendant. It is also reflecting that the users are in fact being influenced by the false and misleading claims made by the defendant. Since the impugned video is available on Instagram which is an electronic social media platform wherein, the consumers can watch the same repeatedly, thus repeatedly getting tarnished the reputation and goodwill of the plaintiff. In support thereof, reliance is placed upon ***Gillette India Limited v. Reckitt Benckiser*** (2018 SCC OnLine Mad 1126).

17. The defendant, being a 'Social Media Influencer', ought to have exercised more care and caution while posting the impugned video as he poses himself to be a self-declared Doctor/ Nutritionist/ Dietician, when the same is not the actual position. Thus, the reckless claims/ statements made by him are bound to have a much greater impact on the plaintiff and its products/ marks as compared to a reckless statement by an ordinary individual. The defendant's appeal in asking consumers to completely avoid feeding the plaintiffs' products/ brand to children misleads the public into believing that the same is unhealthy and bad for children's health, the same is indeed disparaging, defamatory, denigrating and derogatory.

18. Relying upon Addendum II dated 17.08.2023 of the Guidelines for Influencer Advertising in Digital Media in India released by the Advertising



Standards Council of India (hereinafter “*ASCI*”), it is submitted that for such posts relating to health and nutrition, the health influencers like the defendant should have necessary medical qualifications and certifications, which ought to be disclosed by such health influencers in the said posts. Since the same was not provided, the defendant has flouted the *ASCI* Guidelines. Additionally, the impugned video is also violative of the Guidelines for Preventing of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022.

19. The impugned video is one where the defendant is making false, misleading, disparaging and denigrating claims/ statements *qua* the product of the plaintiff under the registered trademark ‘*COMPLAN*’, intending to reach a large number of audience at the expense of the plaintiff’s goodwill thus, the statements made by the defendant fall within the trinity test, since (i) they are false; (ii) they were made and published maliciously/ recklessly; and (iii) they have caused special damages to the plaintiff. In support thereof, reliance is place on *Pepsi Co. Inc. and Ors v. Hindustan Coca Cola Ltd. and Anr.* 2003 SCC Online Del 802.

20. The defendant has conveyed that 40g-50g of sugar is 200% in excess of the daily requirement of sugar for children, which is inaccurate. As 100g of ‘*COMPLAN PISTA BADAM*’ contains 50.5g of sugar, out of which, 26.8g is added sugar and 23.7g is naturally occurring sugar. Even if the sugar content of the plaintiff’s product ‘*COMPLAN PISTA BADAM*’ is calculated taking into consideration the amount of total sugar present therein, the same comes out to be 16.665gms, and not 40-50gms, as claimed by the defendant



in the impugned video. In fact, 2 heaped tablespoons of COMPLAN contains 8.8g of added sugar and not 40g-50gms as alleged in the impugned video.

21. The defendant in the impugned video has conveyed half-truths and distorted a factual, nutritional and scientific statement since there is no recommended daily allowance of sugar for children, but only of 'added' sugar. The World Health Organisation (WHO) has made a clear distinction between added sugar and intrinsic sugar. The defendant has ignored the same in the impugned video as he says that 40g-50g of sugar is 200% in excess of the daily requirement of sugar in children.

22. The defendant has specifically targeted the plaintiff's product 'COMPLAN' in the impugned video since he has spoken three categories of food products in the impugned video:- (1) beverages/ drinks namely Bournvita/ Complan/ Horlicks, (2) Biscuits and Cookies and (3) Kelloggs or Cereals, outrightly naming/ targeting specific marketers/ manufacturers like the plaintiff. In support thereof, reliance is placed upon ***Unilever Industries Pvt. Ltd. & Ors. v. Naresh Gehani & Ors.*** MANU/WB/0887/2023.

23. The impugned video being repetitive and recurring, has been published/ posted by the defendant with a *mala fide* intent and ulterior motives, not in good faith. The same is also apparent from his subsequent conduct of further publishing/ posting things which were directly related to the impugned video.

24. Though the plaintiff respects the freedom of speech and expression of everyone like the defendant, however, the same is not absolute. In any event, the defendant cannot be allowed to encroach upon the rights and reputation of



the plaintiff. Reliance in this regard is placed upon *Subramanian Swamy vs Union of India* (2016) 7 SCC 221.

25. It is in the wake of the above, an *ad-interim injunction* against the defendant is sought for in terms of the reliefs made in the present application by the plaintiff.

Submissions of Defendant:

26. The defendant is a well-established Social Media Influencer and a content creator relating to health and lifestyle, talks about a catena of products sold in the market to highlight the health concerns which can arise from the same. In addition to the above, the defendant is also a qualified Chartered Accountant and Certified Management Accountant, holding a Bachelor's degree in Commerce from St. Xaviers College, who later on found the inclination and motivation to study the subject related to health, fitness, and lifestyle.

27. Learned counsel for defendant submitted that the defendant has obtained several certifications from different universities namely 'Nutrition Science' in March, 2023 and 'Exercise Physiology' in August, 2023 from Stanford University of Medicine, 'Health and Wellness: Designing a Sustainable Nutrition Plan' in November, 2023 from the Harvard Medicinal School. In addition, the defendant has also undertaken a course namely 'GG Pro', on Glucose by Jessica Inchauspe (<https://www.glucosegoddess.com/ggpro>) and is currently pursuing two other courses namely 'Early' by Dr. Peter Attia (www.peterattiamd.com) and 'Biomolecular Athlete' by Dr. Andy Galpin (www.andygalpin.com).



28. The ASCI guidelines are not mandatory and merely serve as guiding principles. They do not impose any compulsory obligations on parties. Thus, any action/ decision premised solely on such guidelines cannot be considered to be obligatory and rather discretionary. Reliance in this regard is placed upon *Century Plyboards (India) Ltd. v. Advertising Standards Council of India*, 1999 SCC OnLine Bom 444; *Teleshop Teleshopping v. Advertising Standards Council of India*, 2015 SCC OnLine Bom 8777 and *Dish TV India Limited v. The Advertising Standards Council of India*, 2016 SCC OnLine Del 6715.

29. In order to plead a case for disparagement, the following three ingredients must be satisfied: (i) the statement must be false; (ii) the statement must have been made with malice; and (iii) the plaintiff should have suffered special damage. The plaintiff has failed to show/ satisfy these three ingredients in the present case. Reliance in this regard is placed upon *Dabur India Limited vs. Colortek Meghalaya Pvt. Ltd.* 2009 SCC OnLine Del 3940 and *Hindustan Unilever Limited vs. Cavincare Private Ltd.* (2010) 44 PTC 270 (Del).

30. The impugned video, in fact, reflects the truth and there are no falsities *qua* the plaintiff's product 'COMPLAN'. The plaintiff has cleverly proceeded to calculate the sugar intake in the plaintiff's product only on the basis of 'added sugar' by drawing a wrong analysis. The basis of calculation of the sugar intake used by the plaintiff is misleading and the defendant talks of the chemical composition of sugar and targets the manner of 'deception' practised by it.



31. The first section of the impugned video is not merely qua plaintiff's COMPLAN and the rest is also directed at biscuits, cookies and cereals, about which the defendant states also the same. Therefore, no malice can be imputed to the defendant as he is merely informing and educating the viewers without injuring the plaintiff and/ or its product 'COMPLAN'.

32. In order to satisfy the essential ingredient of malice, the plaintiff must prove that the statement made by the defendant was made with dishonest or ulterior motive, or improper intent, or an intention to injure. The motive and purpose of the defendant in the impugned video is not to cause injury or harm to the plaintiff. Reliance in this regard is placed upon *M/s Kaleesuwari Refinery Pvt. Ltd. vs. M/s M.K Agrotech Pvt. Ltd.* 2016 SCC OnLine Mad 2966 and *Reckitt Benckister (India) Ltd. vs. Maga Ltd. & Ors.* (2003) 104 DLT 490.

33. The impugned video constitutes dissemination of information aimed at creating awareness and to engender discussion as to the harmful effects of high sugar intake in children, and as such is protected under Article 19(1)(a) of the Constitution of India (hereinafter referred to as "**CoI**"). Article 19(1)(a) guarantees freedom of speech that is constitutionally protected and so long as the information disseminated online does not fall within the grounds under Article 19(2), the same is protected speech under Article 19(1). It is further reiterated that the impugned video is an informative video. Reliance in this regard is placed upon *Shreya Singhal vs. Union of India* (2015) 5 SCC 1.

34. This Court has heard the submissions advanced by the learned counsel for the parties and gone through the pleadings as also perused the documents



on record.

35. It is in the wake of the above, the defendant opposes grant of an *ad-interim injunction* in favour of the plaintiff.

Reasons & Analysis:



36. ‘Speech’, ‘Sound’ and ‘Sight’ drive both the ‘Mind’ and the ‘Heart’ of any Human. What one speaks, what one hears and what one sees determine the thought process which leave an indelible impact on both the ‘Mind’ and the ‘Heart’ of a Human. This gave birth to N(orth)E(ast)W(est)S(outh), first in the form of paper, then in the form of radio, then in the form of television. With the advent of fast pace technology in the age of free access to internet all of the above (paper, radio, television) has today taken the shape of ‘social media’ where NEWS is available at the click of a button. This has given birth/ rise to a ‘Social Media Influencer’, who is/ claims to be a credible person of interest with backing from sources of own with substantial base across the globe. Such a ‘Social Media Influencer’ can leave a significant impact on Humanity. If backed by reasons, it is no doubt for the betterment of Humanity but if baseless it can significantly backfire.

37. Since the defendant herein, *admittedly*, is one such ‘Social Media Influencer’ who has uploaded the impugned video about the plaintiff’s product ‘COMPLAN’, this Court is called upon to adjudicate if it in any manner resulting in disparagement thereof.

Genesis of dispute(s):



38. Without reiterating the factual matrix involved, reproduced herein below is the relevant part of the storyline which has brought the parties to the suit before this Court:-

Frame(s)/ Visual Description	Dialogue/ Statement(s)
	<p><i>“Don’t give these 3 foods to your kids ever.”</i></p>
	<p><i>“No. 3, Bournvita, COMPLAN, Horlicks. Don’t mix them in the milk in the morning for your kids.”</i></p>



	<p><i>“2 scoops contains 40-50 grams of sugar that’s 200% of your kids daily requirement of sugar.”</i></p>
	<p><i>“As you know, excess sugar, glucose spike, they will become hungrier, they will be crankies then they will want snacking.”</i></p>
	<p><i>“Don’t feed these 3 to your kids, improve their health.”</i></p>

RELEVANT EXTRACTS OF THE CAPTION OF THE IMPUGNED VIDEO

These three foods are spoiling your kid's health

Bottoms: Complan starts in... These three scoops are 40 to 50 grams of sugar, which is 200% excess of your kid's daily sugar requirement.

Excess sugar causes glucose spikes, making them hungrier and crankier.

Biscuits and cookies: These are evil to a kid's gut, pull out and sugar.

Even the so-called health biscuits are not really healthy.

Ballogis or Cereal: It's wheat coated with sugar, devoid of nutrients, makes them eat more and more and become...
hungry and crankier.

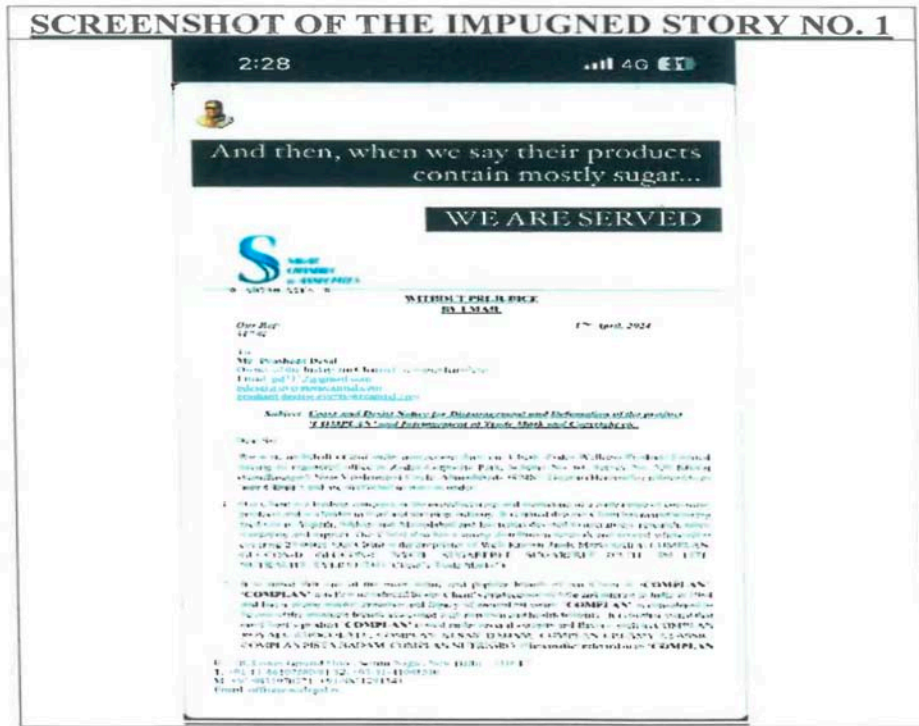
Avoiding these foods can improve your kid's health drastically, and I highly recommend you to stop give these to your kids.

Healthy food that...

5,939 likes



Instagram Story dated 19.04.2024

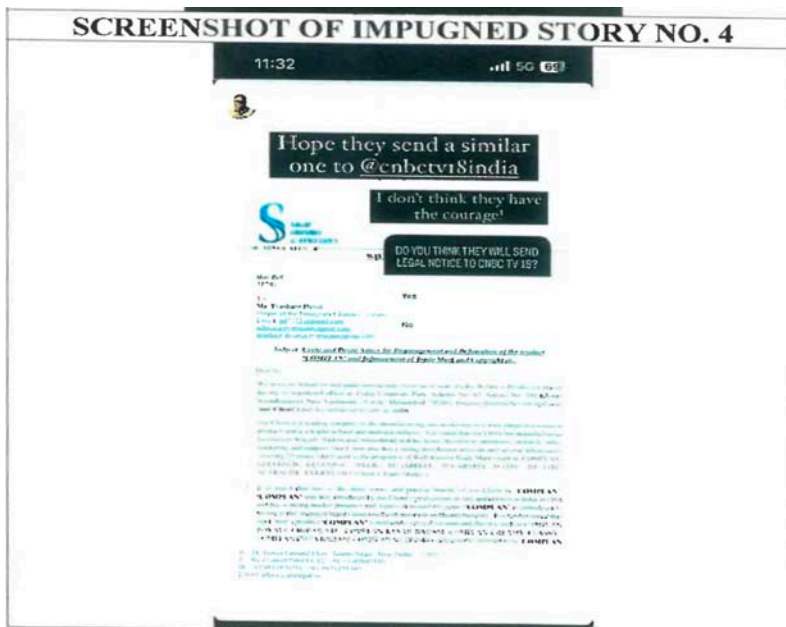
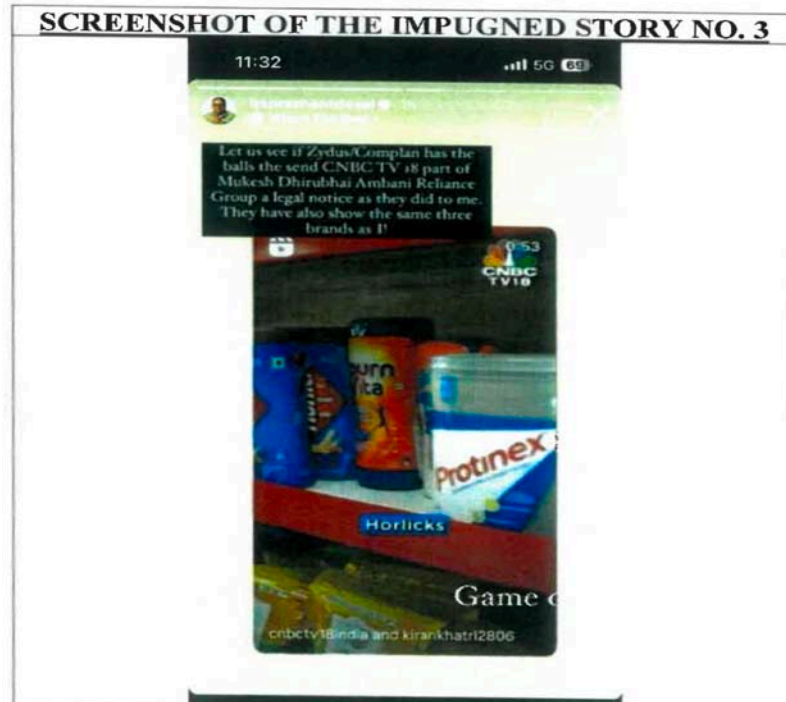


Instagram Story dated 21.04.2024



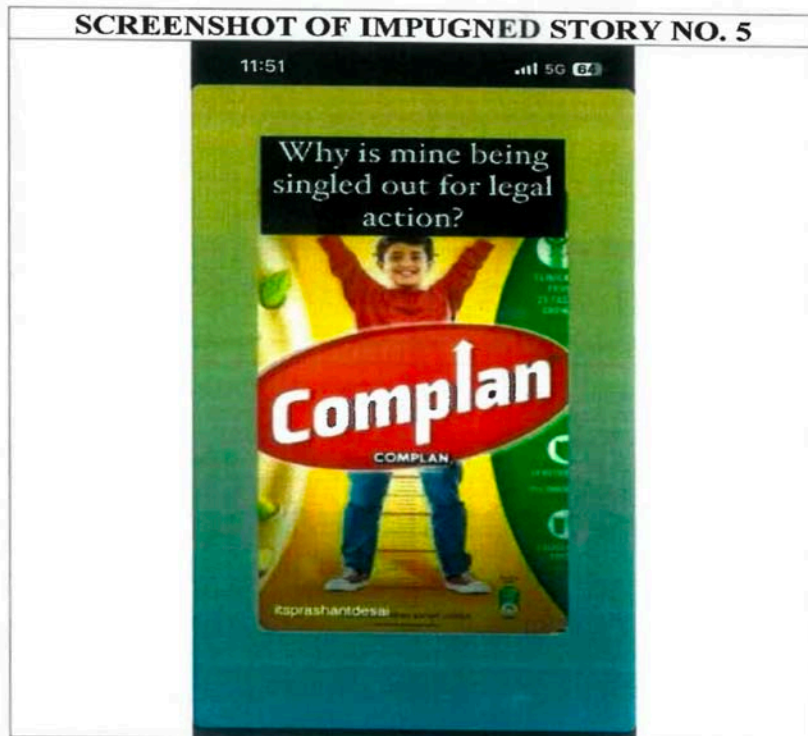


Instagram Stories dated 25.04.2024

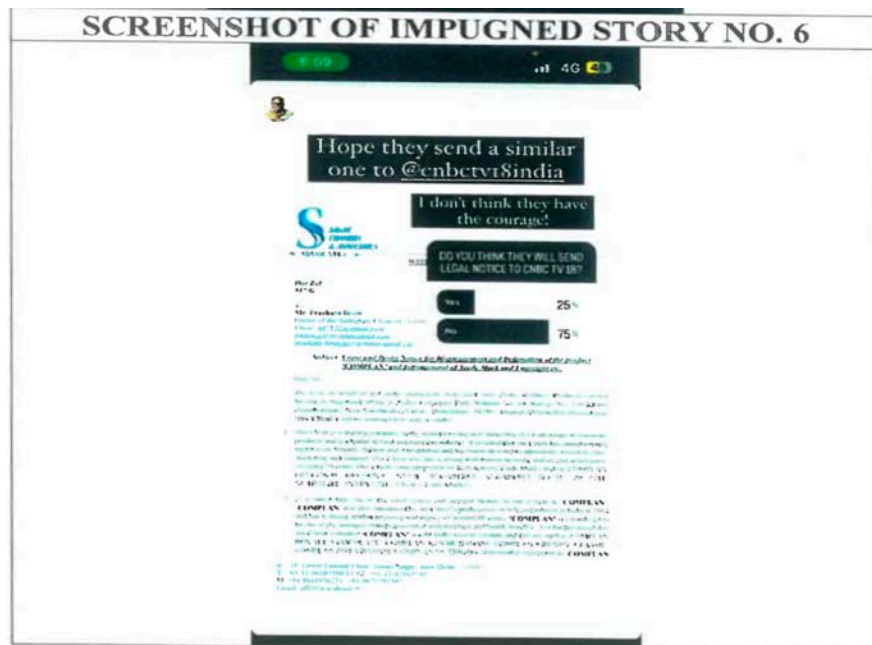




SCREENSHOT OF IMPUGNED STORY NO. 5



SCREENSHOT OF IMPUGNED STORY NO. 6





Parties, their status and the lis inter se them:

39. The plaintiff is not a fly by night operator and has been in the industry of food and nutrition products with the trademark ‘COMPLAN’ since and from the year 1956. It started using the trademark ‘COMPLAN’ since the year 1994 and has been in the market since then. It has several variants/COMPLAN family marks available and has been granted registrations for the word ‘COMPLAN’ *per se* and its variations under various Class(s) 5, 29, 30 and 32 in India as also the trade dress.

40. The defendant, on the other hand, is a Chartered Accountant and Certified Management Accountant with a Bachelor’s degree in Commerce. He claims himself to be an established ‘Social Media Influencer’ who is creating content relating to health and lifestyle since the year 2017. He has also obtained several certifications from different Universities in the field of nutrition, exercise, health and wellness. Therefore, *admittedly*, he is neither a Doctor nor a Nutritionist nor a Dietician and certainly not connected with the Health Industry in any manner whatsoever.

41. In the impugned video, the defendant emphatically goes on to say “*Don’t give these 3 foods to your kids ever.*”, “*No. 3, Bournvita, COMPLAN, Horlicks. Don’t mix them in the milk in the morning for your kids*”, “*2 scoops contains 40-50 grams of sugar that’s 200% of your kids daily requirement of sugar*”, “*As you know, excess sugar, glucose spike, they will become hungrier, they will be crankies then they will want snacking.*” and “*Don’t feed these 3 to your kids, improve their health.*”, amongst others later on from time to time (as per paragraph 38 hereinabove). The aforesaid has caused the



plaintiff to approach this Court for seeking appropriate relief(s) against the defendant.

Basis of claim/s made by defendant and their veracity:

42. The defendant is a qualified Chartered Accountant and Certified Management Accountant, holding a Bachelor's degree in Commerce who has also completed certain courses like '*Nutrition Science*', '*Exercise Physiology*', '*Health and Wellness: Designing a Sustainable Nutrition Plan*', '*GG Pro*', on Glucose and is currently pursuing two other courses namely '*Early*' and '*Biomolecular Athlete*'. Though the defendant claims to be, over the internet, motivating his viewers over issues related to health, fitness and lifestyle, however, none of them are ever talked about by the defendant in the impugned video. Strongly, despite being neither a Doctor nor a Nutritionist nor a Dietician and certainly not connected with the Health Industry in any manner whatsoever, the defendant, who is an outsider, he seems to comment upon the chemistry behind the composition of the plaintiff's COMPLAN. Merely being a 'Social Media Influencer', the defendant is not bestowed with the independence to speak and/ or comment about subject of which he is not the master.

43. In fact, 'Social Media Influencer' like the defendant is always expected not to cross over and try to play the role of a professional or try to fall in/ step into the shoes of a teacher or any other professional or act like a preacher, more so without any backing to substantiate what is being talked/ shared. In the present impugned video since the defendant can be seen/ heard making claims without any backing of truth and/ or proof thereof, the contents/



statements thereof lack accuracy. Their credibility/ authenticity thereof are itself shaken and cannot be treated as genuine. Thus, they are far from being reliable. A ‘Social Media Influencer’ like the defendant cannot express and/ or advocate his ideas/ opinions freely without any substantive basis and/ or backing and/ or is expected to be sensible, prudent, careful, cautious and pragmatic instead of being unwise and reckless, especially in today’s age when media is a powerful tool having an influence over all Humanity.

44. Interestingly, as per the ASCI guidelines, for the posts related to health and nutrition, a Social Media Influencer must have relevant qualifications such as a medical degree, or be a certified nurse, nutritionist, dietician, physiotherapist, psychologist etc. depending on the specific advice being given, which admittedly is not the case of the defendant. Admittedly, the defendant does not possess anything of that kind.

45. It is a matter of fact that the plaintiff is an age old Company dealing, offering and selling COMPLAN since more than long for which it has obtained the requisite authorisation(s), permission(s), approval(s), sanction(s) or like from the Statutory Authority(s) as applicable and in accordance with the Food Safety and Standards Authority of India (hereinafter referred to as “*FSSAI*”) guidelines as well and it is acting within the counters therein as set by the Government of India. They have never been doubted and/ or questioned by the defendant anytime. In such a situation, the defendant by uploading the impugned video is questioning all such authorisation(s), permission(s), approval(s), sanction(s) or like obtained by the plaintiff from the Government of India.



46. Moreover, the impugned video starts off with a negative statement without any backing, substantive basis or otherwise, and that too without any concrete medical findings. Therefore, this Court has no hesitation in holding that the impugned video of the defendant is indeed damaging, unhealthy as it is hateful and malicious and is in fact false on the face of it, hence of no support thereto. The defendant cannot be allowed to come up with any explanations behind the alleged explanations/ chemistry of such statements made by him in the impugned video, now before this Court without responding to the legal notice issued by the plaintiff and more so, when the world at large were/ are oblivious of anything which he is saying now. Interestingly, since the defendant has stood by his statements in the impugned video, he cannot be allowed to give an explanation with the closed doors of a courtroom. A 'Social Media Influencer' like the defendant ought to have been more careful while uploading the impugned video, especially as he was naming the plaintiff's product 'COMPLAN' specifically.

Overall conduct of the defendant:

47. The tone, tenor and language used by the defendant in the impugned video and the subsequent actions by him from time to time within a span of few days speaks volumes of his overall conduct, more so, when he is claiming himself to be a 'Social Media Influencer'. All of them give the impression that the defendant was ridiculing the plaintiff all throughout. In fact, the defendant instead of responding to the plaintiff or taking down the impugned video chose to proceed ahead by uploading the Legal Notice and that too with unbecoming and unpolite words. Even before this Court, the



defendant has failed to give any explanation as to why he specifically chose to name the plaintiff's product 'COMPLAN' and continued with his actions later on as well, even though when a qualified person like him could have expressed his concerns in a more better/ sublime manner or about his subsequent continuing action(s). It can be said that the defendant was not acting as a responsible 'Social Media Influencer'.

Overall Impact and effect on public at large:

48. The defendant, conscious of his standing/ worth as a 'Social Media Influencer' ought to have been more sensible, prudent, careful, cautious and pragmatic while uploading the impugned video. Not only the defendant has about one million followers on Instagram where he has uploaded the impugned video as also 60,000+ followers on Facebook and at one stage, as per estimates given by the plaintiff, the impugned video had approximately 3,49,02,025 views, 6,69,790 likes, 5,625 comments and 9,59,000 shares. Since the impugned video is freely available over the internet to the world at large till date, due to its wide reach and going by the fast pace, the viewership thereof would have drastically increased as of now, if it is allowed to continue to be there as it is, will leave a lasting negative impact over the minds of members of general public and thus is bound to act as a deterrent amongst such members in buying the plaintiff's product 'COMPLAN'.

49. In fact, in view of the changing times, it has been recently held by a learned Single Judge of this Court in *Arvind Kejriwal v Stae & Anr.* 2024 SCC Online Del 719 as under:-



“... ..46. In addressing a democratic community, it is crucial to emphasize that freedom of speech, while a fundamental right, does not grant individuals the license to inflict harm or tarnish the reputation of others. This distinction becomes particularly pertinent when grappling with the court's dilemma of striking a balance between the cherished value of free expression and the equally essential need to protect an individual's reputation.

47. Thus, a Court, while weighing the value of reputation of one party and freedom of expression of the other, has to keep in mind that in a democratic setup, a person who is complainant in such cases may be vulnerable in a given set of circumstances in face of his competing interest with that of the accused. In rendering equal protection, the court must balance the right of free speech with the need to prevent unjust harm to reputation. The injurious falsehood of a statement will definitely invite defamation and loss of reputation.

* * *

IV. MEETING THE CHALLENGE OF ADJUDICATING GREY AREA OF LAW NOT YET EFFECTIVELY ADJUDICATED UPON : LAYING FOUNDATION STONE OF JURISPRUDENCE

49. The evolution of technology and all pervasive influence of social media have transformed the landscape through which reputational harm can occur. As communication has shifted from traditional forms of speech to the digital space, the law must adapt to effectively addressing the new weapons of harm to reputation, particularly in the context of posts and reposts on social media platforms. Unlike private conversations, digital content posted and reposted on social media has the potential for immediate and widespread dissemination. The virality and permanence of online content amplifies its impact, making it a tool for causing reputational harm.

50. The content shared at such platforms spreads rapidly, and any content involving the reputation of a person will attract considerable harm in case he is negatively portrayed on the basis of a content which is scandalous or indictable.

51. Needless to say, the extensive circulation of such content in public can cause considerable injury to a person's reputation. Such written and posted content has the inherent quality of being permanent by virtue of the fact that a man's reputation suffers while the video remains available on the public platform and in the cyber space.

52. The number of followers or the reach of an individual's online presence can significantly magnify the impact of a post or repost. As a result, the law needs to evolve to navigate the complexities of this digital



era. The concept of publication, traditionally associated with printed materials, must be re-examined in the context of virtual platforms where information can reach a vast audience in seconds. Moreover, the legal system should be attuned to the dynamics of social media influence.

Pace of Spread of Scandalous Content : From the Echo of Whispers in Pre-Digital Era compared to the Spread at Lightning Speed of Digital Dissemination in Digital Era

53. While deciding such cases, the Courts have to realize that in this advanced age of technology, the content of **defamation which is scandalous in nature, spreads like a wildfire**, leading to **instant injury to reputation of a person by sheer extent of its reach to millions within minutes and is not like whispered scandal of the previous past.**

* * *

55. **The force of causing injury to reputation in virtual realms can be particularly potent, with the impact transcending physical boundaries and reaching a global audience. The virtual space provides a platform where individuals, especially those with significant influence, can disseminate information rapidly, leading to swift and widespread consequences for a person's reputation.**

56. **The force of a virtual blow is often exemplified by the sheer number of followers an individual commands on digital platforms. The larger the following, the greater the potential reach and influence of their virtual actions. In the virtual realm, a damaging statement or action can reverberate across social media, online forums, and other digital spaces, magnifying its impact on the targeted individual's reputation.**

57. **Unlike physical injury, which may be localized and limited in scope, virtual injury can have far-reaching and long-lasting effects. The force of a virtual blow is intricately tied to the dynamics of online engagement, where the virality and permanence of digital content contribute to the enduring nature of reputational harm.**

emphasis supplied

50. Also, it is a common knowledge that it is neither the followers nor the viewers nor the shares which determine the actual head count as there are always more to it since they are never reflected at any place at all. Therefore, such unbacked, untruthful contents of the impugned video are bound to cause and in fact already causing a dent to the plaintiff's product 'COMPLAN'.



Article 19 of the Constitution of India: Freedom of speech and Expression:

51. *Article 19* of the Constitution of India does not give an unfettered rights to anyone, much less, the defendant. As per *Article 19* of the CoI, no doubt all citizens have the right to freedom of speech and expression, but that is only subject to reasonable restrictions imposed by the State on the exercise of the said right in the interests of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

52. By virtue of the protection granted to all by *Article 19* of the CoI, any man is free to convey/ share/ opine about anybody and/ or anything without being slanderous, defaming, libelling amounting to criticism and/ or character assassination.

53. Nobody, much less the defendant herein, merely because since he is a 'Social Media Influencer', under the garb of *Article 19* of the CoI, can be entitled to claim to be under the shelter of freedom of speech and expression when he is saying something negative or attacking the plaintiff's product 'COMPLAN'. The defendant cannot be allowed to openly belittle, malign or vilify the plaintiff's product 'COMPLAN' about something which has been recognised/ authorised by the Government of India. Allowing the defendant to do so would be against the very tenets of the established law as it would be against those very requisite authorisation(s), permission(s), approval(s), sanction(s) as applicable and in accordance with law including FSSAI or like



obtained by the plaintiff from the Government of India for carrying on its business activities since long with respect to its product 'COMPLAN'.

54. In any event, in the considered opinion of this Court, a 'Social Media Influencer' like the defendant can only be free/ entitled to take recourse to *Article 19* of the CoI, if he would have acted verily, cautiously, carefully and within the permissible precincts and not otherwise.

Disparagement:

55. Though the term 'disparagement' has not been defined in any Statute but it has since evolved by judicial interpretation from time to time since the evolution of changing times. As per the *Black's Law Dictionary* the term 'disparagement' is defined as "A false and injurious statement that discredits or detracts from the reputation of another's property, products or business." Similarly, as per *Chambers 21st Century Dictionary* the same term "disparagement" is defined as "to speak of someone or something with contempt."

56. In essence, the term 'disparagement' means speaking, which includes reading, hearing and seeing, something in a negative vein. This, sometimes can include even what is not spoken in a bad/ unkind/ sublime/ impolite/ sarcastic/ cryptic manner which are/ can be false, incorrect, untrue, wrong, unmeaningful, unfounded, inexact, slander or so like as also damaging, harmful, injurious, disfiguring, malicious or so like. Though the basic contours for act(s) of disparagement are cut out but that there is disparagement or not and the scope of comparison thereof all depend upon the facts and circumstances involved in each individual case(s).



57. A learned Single Judge of this Court in *Pepsi Co. Inc. (supra)* has held as under:-

“... .. 11. What is disparagement. The New International Websters' Comprehensive Dictionary defines disparage/disparagement to mean, “to speak of slightly, undervalue, to bring discredit or dishonor 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 dis-credit on, slightly of and depreciate.”

12. 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 show one's product better or best without derogating other's product then that is not actionable.”

emphasis supplied

58. Similarly, a learned Single Judge of the Madras High Court in *Gillette India Limited (supra)* after that, on the same lines, has also held as under:-

“... .. 96. The meaning of the expression “disparage” as given in the commonly used dictionaries is, *inter alia*, to speak slightly, to undervalue, to bring discredit or dishonour, to deprecate, to degrade, to derogate, to denigrate, to defame, to reproach, to disgrace, or to unjustly class. Disparagement is, *inter alia*, the act of speaking slightly, of undervaluing, of bringing discredit or dishonour, of depreciating or degrading or disgracing or unjust classing. It also means derogation or denigration or defamation or reproachment.”



59. The defendant, despite being a ‘Social Media Influencer’ cannot be permitted to identify and/ or notify the plaintiff’s product ‘COMPLAN’ by directly naming it. By doing so in the impugned video, especially in more than one ways asking the members of general public to evade to have the plaintiff’s COMPLAN, he has directly targeted the plaintiff and its product COMPLAN. The same cannot be permitted. Reliance in this regard is placed upon *Unilever Industries Limited (supra)* wherein a learned Single Judge of Calcutta High Court has held as under:-

“... ..12. *On a plain reading, sub-clause (8) of section 29 of the Act stipulates the circumstances when advertising of a registered trade mark would constitute infringement. Advertising of a trade mark to take unfair advantage of, or against the honest commercial practices or which is detrimental to the distinctive character or which is against the reputation of the trade mark shall constitute an infringement. Sub-clause (9) stipulates that where the distinctive element of a registered trade mark consists of words, the spoken use of such words as well as visual representation for promoting the sale of goods or promotion of service would constitute infringement.*

13. *Prima facie, the impugned videos/posts are detrimental to the distinctive character and reputation of the trademark belonging to the petitioners and impinge on their legitimate interests as owners of their trademark. Moreover, the impugned videos and posts involve unauthorized use of the registered trademark of the petitioners thereby attracting infringement under section 29 of the Act.*

* * *

15. *Health and Wellness influencers are a modern day reality. Article 19(1) of the Constitution guarantees freedom of speech and expression. The restriction to free speech, expression, views and opinion is only to the limited extent as*



enshrined in Article 19(2) of the Constitution. It is also well recognized that freedom of speech is not an absolute and unrestricted right. The rival balancing interests which have to be taken into account in matters such as this are the interests of the consumers and the public to be made aware against the right of the petitioners to seek protection of their intellectual property rights.”

emphasis supplied

60. A learned Single Judge of this Court in *Dabur India Limited (supra)*, which has also since been reiterated by a learned Single Judge of this Court in *Hindustan Unilever Limited (supra)*, the act of disparagement has to be considered on the basis of three prong tests:-

“... ..12.The tort of the trade libel is variedly referred to as slander of goods, malicious falsehood or even injurious falsehood. It appears that in recent times courts have been using the expression of

“malicious falsehood” to describe a tort of the kind involved in the present case. The reason perhaps is that the expression of “slander goods” or “trade libel” presents a narrower scope of the tort which essentially is tailored to protect the financial interest generally and not commercial interest. For a plaintiff to succeed in an action based on malicious falsehood, the necessary ingredients are:

(i) a false statement is made which is calculated to cause financial damage;

(ii) the statement is made maliciously with an intent to cause injury;

(iii) the impugned statement has resulted in a special damage unlike in defamation in which the falsehood of the statement is presumed, and it is for the defendant to prove that the statement is true.”

emphasis supplied



61. In the present scenario, even though the defendant is neither a competitor nor a qualified Doctor/ Nutritionist/ Dietician, however, he has openly named, identified and criticised the plaintiff's product 'COMPLAN' by starting the impugned video on a purely negative note by making unsubstantive and false statements therein. The contents/ statements therein are not backed by any substantive basis, even when they were uploaded and even as on date, therefore, the said contents/ statements made by the defendant therein are nothing short of being false, which is writ large.

62. The said impugned video is also replete with malice since the defendant has also made repeated statements referring to plaintiff's product 'COMPLAN' on more than one occasions. Moreover, the defendant has not stopped there and has continued to act later on as well. His subsequent actions and comments thereon are also showing his intent of somehow portray to the general public that he cannot be questioned simply because he is a 'Social Media Influencer'.

63. Moreover, by way of the impugned video, he is seeking to convey that the plaintiff's product 'COMPLAN' is not only harmful but has to be stopped giving to the children at large. In effect, by way of his false statements, the defendant is clearly asking the people to evade/ forego and maintain a distance from the plaintiff's product 'COMPLAN'. Lastly, the message he is trying to convey to the members of general public to let go of the product 'COMPLAN' of the plaintiff in all manners whatsoever. The aforesaid, coupled with the fact that the defendant has a large, ever growing followers



base on Instagram platform as also on Facebook, and since this is not the final count, the uploading of the impugned video has caused the plaintiff to suffer special damages being a matter of trail need not be gone into by this Court at this stage.

Defence set up by defendant:

64. The defendant is silent about the impugned video, the contents thereof/ the statements made therein. All that has been submitted are the background behind it and the status of the defendant as a ‘Social Media Influencer’. The same, needless to say have already been negated in the preceding paragraphs and even otherwise are not required to be considered at this stage. Also, although, the response to a Legal Notice is of little relevance generally, and it all depends upon the facts and circumstances involved in each case, however, non responding to it carried sufficient weight. In the present scenario, since the defendant despite receipt thereof kept quite and not only uploaded the same within no time on Instagram with comments thereon, speaks volume of his conduct, (mis)deed and his intentions *qua* the plaintiff’s COMPLAN.

65. Since the impugned video is available to view on the Instagram account of the defendant daily, suffice to say, in view of the settled law in ***Bengal Waterproof Ltd. v. Bombay Waterproof Mfg. Co.***, (1997) 1 SCC 99 and ***Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia***, (2004) 3 SCC 90 since there is a continuous cause of action arising on each occasion, there is no delay in instituting the suit along with the present application.

66. Though an issue of territorial jurisdiction was taken but learned counsel for defendant has not addressed any arguments *qua* the same. Having



accepted notice, made submissions and filed a reply to the present application as also not argued anything qua non-jurisdiction of this Court, in the considered opinion of this Court, the defendant has accepted the jurisdiction of this Court. Thus, this Court has the jurisdiction to try and entertain the present suit.

67. For the aforesaid reasons and analysis, the defence set up by the defendant lacks credibility, especially at this stage whence this Court is adjudicating the present application under *Order XXXIX rule/s 1 & 2* of the CPC.

68. The plaintiff has been able to make out a case for disparagement. Resultantly, as also in view of the settled position of law discussed hereinabove, none of the judgments cited by the learned counsel for defendant come to her aid.

Conclusion:

69. The plaintiff has been able to make out a *prima facie* case since the impugned video uploaded by the defendant is without any basis and/ or substance and the contents thereof were/ are unverified and since the defendant is neither a Doctor nor a Nutritionist nor a Dietician and certainly not connected with the Health Industry in any manner whatsoever.

70. The defendant's unauthorised and dishonest use of the plaintiff's registered mark 'COMPLAN' in the impugned video, is/ are detrimental to, the distinctive reputation/ goodwill/ character of the plaintiff's trademark 'COMPLAN' and 'COMPLAN family marks', amounting to infringement as per Section 29(8) of the Trade Marks Act, 1999.



71. Additionally, the defendant has also unauthorizedly and entirely reproduced the Label/ Packaging of the plaintiff's product 'COMPLAN PISTA BADAM CARTON' in the impugned video hence, such unauthorised reproduction cannot be permitted as it does not fall within any exceptions and does not construe genuine criticism. Additionally, since the defendant is not criticising the artwork of the Label 'COMPLAN PISTA BADAM CARTON' but the contents of the product 'COMPLAN' the said act of the defendant, is bound to create hatred and a sense of dislike amongst the general public at large.

72. The plaintiff has also been able to establish that if the impugned video is continued to remain uploaded then the same shall invariably cause *irreparable loss, harm and injury* to it and for which it cannot be compensated in any manner whatsoever, much less financially.

73. Lastly, in view of the afore-stated facts and circumstances, the *balance of convenience* and inconvenience also lies in favour of the plaintiff and against the defendant since the plaintiff has been in the same industry dealing, offering and selling the very same COMPLAN for decades after having duly obtained all the requisite authorisation(s), permission(s), approval(s), sanction(s) or like from the Statutory Authority(s) as applicable and in accordance with law, including the FSSAI and it is acting within the counters therein as set by the Government of India.

74. In view thereof, the defendant, and all those acting on his behalf is/ are restrained from publishing, uploading, issuing or telecasting, making available to view the impugned video or any part thereof and/ or in any



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language whatsoever and/ or any other video/ content/ post in any manner/ medium including but not limited to the electronic media, social media and/ or print media/ television/ radio so as to disparage and denigrate the plaintiff and/ or the plaintiff's products sold under the brand/ trademark 'COMPLAN/ COMPLAN PISTA BADAM' and/ or any other brand/ trademark of the plaintiff, in any manner whatsoever as the actions of the defendant in the impugned video and forthwith amount to disparagement of the plaintiff's registered trademark and the defendant is directed to take down the impugned video from all his social media handles forthwith, within a period of *two weeks* from the passing of this order.

75. Accordingly, the present application stands disposed of.

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76. List before Joint Registrar on 05.11.2024 i.e., the date already fixed.

SAURABH BANERJEE, J.

SEPTEMBER 26, 2024

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