

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION (L) NO. 1153 OF 2014****IN****SUIT NO. 497 OF 2014**

M/s. Teleshop Teleshopping .....Applicant

In the matter between:

M/s. Teleshop Teleshopping ...Plaintiff

vs.

The Advertising Standards Council of India & another ...Defendants

Mr. Abhishek Bharati, instructed by M/s. MZD Legal Consultancy, for the Plaintiff.

None for the Defendants.

**CORAM: S.J. KATHAWALLA, J.**

**DATE: MAY 07, 2014**

**P.C.**

1. The Plaintiff – M/s. Teleshop Teleshopping has filed the above Suit against the Defendant No.1 – The Advertising Standards Council of India and Defendant No.2 – The Infomercial Advertisers Council of India, challenging the publication dated 14<sup>th</sup> March, 2014 (Exhibit-D to the Plaintiff), qua the Plaintiff, and the letter issued by them to the Drug Inspector, Food and Drug Administration, Thane, dated 23<sup>rd</sup> April, 2014 (Exhibit-E to the Plaintiff).
2. The Plaintiff has taken out the above Notice of Motion in the Suit and has moved this Court for urgent ad-interim reliefs to inter alia restrain the Defendant

No.1 from in any manner enforcing or acting upon the said publication dated 14<sup>th</sup> March, 2014, qua the Plaintiff and the said letter dated 23<sup>rd</sup> April, 2014 issued by the Defendant No.1 to the Drug Inspector, Food and Drug Administration, Thane.

3. None appear for the Defendants though served.

4. Defendant No. 1 is incorporated and registered as a Private Limited Company under Section 25 of the Indian Companies Act, 1956. The Defendant No. 1 – The Advertising Standards Council of India (“ASCI”) is a voluntary self-regulation council comprising of members from the advertising, media and other professional and allied services industry and trade. The Plaintiff is not a member of the Defendant No.1. The Defendant No.2 – The Infomercial Advertisers Council of India is also a Company incorporated and registered under Section 25 of the Companies Act, 1956. The Defendant No.2 is also a voluntary self-regulatory body, comprising of members who are engaged in the production and making of infomercials. The Defendant No. 2 makes self-regulating rules and guidelines to regulate the infomercial industry.

5. On 15<sup>th</sup> November, 2013, the Plaintiff wrote to Defendant No.2 enclosing a CD of the Plaintiff's infomercial for the product “Fair Look” (the said infomercial No.1) and requested for suggestions and improvements, if any. On 14<sup>th</sup> February, 2014, the Plaintiff again wrote to the Defendant No.2 to peruse the CD of infomercial No.1 and inform the Plaintiff of any complaints/objections which may have been received with respect to the

infomercial No.1.

6. On 24<sup>th</sup> December, 2013, the Plaintiff wrote to Defendant No.2 enclosing a CD of the Plaintiff's Infomercial "Go Addiction Plus ( "the said infomercial No.2) and requested for suggestions and improvements, if any. On 28<sup>th</sup> February, 2014, the Plaintiff once again wrote to the Defendant No. 2 requesting the Defendant No. 2 to peruse the CD of the infomercial No. 2 and inform the Plaintiff of any complaints/objections which may have been received with respect to the infomercial No.2.

7. On 20<sup>th</sup> February, 2014, the Defendant No. 2 wrote to the Plaintiff confirming that no complaints were received by them with respect to the infomercial No.1. On 1<sup>st</sup> March,2014, the Defendant No.1 wrote to the Plaintiff confirming that no complaints were received by them with respect to the infomercial No.2.

8. On 14<sup>th</sup> March, 2014, Defendant No.1 published on its website ([www.ascionline.org](http://www.ascionline.org)) a document titled 'ASCI CCC Decisions : December 2013' ("the said ASCI CCC Publication") which stated that in the month of December, 2013, the Consumer Complaints Council of the Defendant No.1 had upheld complaints received against 87 advertisements. The said infomercial No. 2 of the Plaintiff was included in the list of 87 advertisements against which complaints were upheld by the Consumer Complaints Council of the Defendant No.1. The Plaintiff's infomercial No. 2 appeared in the said ASCI CCC Publication at entry No. 64 under the category of 'Health and Personal Care' and

reads thus:

*“ 64. Go Addiction Plus claims that, the use of this product for the perfect cure for the people addicted with alcohol, cigarette, tobacco, etc.”*

Upon publishing of the ASCI CCC decisions, the infomercial No. 2 which was being telecast on several channels including the channels owned by the UTV Group (which are the members of the Defendant No.1), were abruptly discontinued in March,2014, without giving any prior notice to the Plaintiff.

9. Vide an e-mail dated 25<sup>th</sup> April, 2014, one Mr. Jagdeep Pawar of the Discovery Channel informed M/s. Sky Star Advertising (the advertising agency of the Plaintiff), that the Discovery Channel was in receipt of a letter dated 23<sup>rd</sup> April, 2014, from the Defendant No.1. The said Discovery Channel provided the said M/s. Sky Star Advertising with a copy of the said letter dated 23<sup>rd</sup> April, 2014 (“the said ASCI letter”) which was then forwarded to the Plaintiff. Vide the said ASCI letter, the Defendant No.1 had informed one Mr. R.P. Thete inter alia that a similar complaint, bearing Reference No. C. 4923, in respect of the said infomercial No.1 had been considered and upheld by the Consumer Complaints Council at its meeting in June, 2013. The Defendant No.1 further informed the said R.P. Thete that the Consumer Complaints Council had, after viewing the said infomercial No.1 held it to be in contravention of Chapter 1.1 and Chapter 1.5 of the “Code” prescribed by the Defendant No.1.

10. The Plaintiff has submitted that upon the discontinuation and stopping of telecast of the said infomercial No.1 and the said infomercial No.2, the Plaintiff

has suffered and continues to suffer immense hardship including loss of business profit and loss of goodwill enjoyed by the Plaintiff in the industry and the Plaintiff is unable to continue his business either with respect to the said infomercial No.1 or the said infomercial No.2 and is also facing hardship in dealing with the television channels. The Plaintiff has therefore filed the present Suit and moved for urgent ad-interim reliefs restraining the Defendant No. 1 from enforcing the said ASCI CCC publication dated 14<sup>th</sup> March, 2014 and the said ASCI letter dated 23<sup>rd</sup> April, 2014.

11. I have considered the submissions advanced on behalf of the Plaintiff. The Defendant No.1 is a private body and is not a statutory body or 'State' or an instrumentality or an agency of the State within the meaning of Article 12 of the Constitution of India. The Defendant No.1 in the garb of acting as a voluntary self regulatory Council cannot act as a statutory regulator and cannot arrogate to itself the powers of restricting/restraining or causing the restriction/restraint of any commercial advertisements belonging to the Plaintiff who is not a member of the Defendant No.1. The decisions made and directions issued by the Defendant No.1 to its members in respect of the infomercials of the Plaintiff have the effect of adversely affecting and restricting the rights of the Plaintiff to carry out its trade, business and occupation and to that extent the directions are against law and beyond the realm of the Defendant No.1's powers.

12. The Defendant No.1 has not even provided the Plaintiff with a hearing, and in an unauthorized and illegal manner has discontinued the infomercial

No.1 and infomercial No. 2 of the Plaintiff, who is not a member of the Defendant No.1. By doing so, the Defendant No. 1 has caused and is continuing to cause immense and irreparable harm and loss to the Plaintiff.

13. Similar conduct of Defendant No. 1 had come up for consideration before this Court in the case of *Century Plyboards (India) Ltd. vs. The Advertising Standards Council of India*<sup>1</sup> wherein it was inter alia held that a voluntary association of persons, even a Company such as the Defendant, cannot usurp the jurisdiction of the Courts, Tribunals and Fora, duly constituted by the Parliament. Paragraph 7 of the said decision is relevant and is reproduced hereunder:

*“7. I have considered the arguments put forward by the learned Counsel for the parties. Undoubtedly defendant is a Company which is governed by the provisions of the Companies Act. Therefore, the members of the Company would be bound by all the directions which are issued by the Board of Directors of the Company. Any directions issued by this Company are not binding on the plaintiff. Restrictive order can only be passed by the State in exercise of its powers under Article 19 of the Constitution. This Article permits the State to impose reasonable restrictions on the Rights to Freedom, guaranteed in this Article. No individual or company can arrogate to themselves the powers of the State, Statutory Authorities or Instrumentalities of the State. I am prima facie of the view that this Company cannot be elevated to the status of State, Statutory Corporation or Instrumentality of the State. That being so, any action taken by the Company which*

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would infringe the rights of a citizen of India guaranteed under Articles 14 and 19 would be without jurisdiction. No directions issued by the Company to the members can be held to be binding on a non-member. Therefore, if the directions issued by the Company to the members have the effect of adversely affecting the trade or profession of a non-member, the directions would be without jurisdiction. Interestingly in the Memorandum and Articles of Association it is provided that the Code is not in competition with law. Its rules, and the machinery, through which they are enforced are designed to complement legal controls, not to usurp or replace them. But the directions contained in the two impugned orders clearly have the effect of a mandatory injunction. This kind of order can be granted only by courts duly constituted under law. A voluntary association of persons, even a Company such as the defendant, cannot usurp the jurisdiction of the courts, Tribunals and Fora duly constituted by Parliament”.

14. The said decision was followed by the Hon'ble Delhi High Court in the case of *M/s. Quick Telemall Marketing Pvt. Ltd. vs. The Advertising Standards council of India* (Defendant No.1 herein) dated 27<sup>th</sup> September, 2013 in CS (OS) No. 1877 of 2013. This Court is disturbed to note that despite repeated orders passed by this Court as well as the other Courts against the Defendant No.1, pointing out that such orders passed by the Defendant No. 1 are without jurisdiction and against the principles of natural justice, the Defendant No.1 has continued to pass such orders.

15. In my view, the Plaintiff has therefore made out a prima facie case in its

favour. The balance of convenience is also in favour of the Plaintiff and against the Defendant No.1. In view thereof, ad-interim reliefs are granted in terms of prayer clauses (a) and (b) which are reproduced hereunder:

*“(a) that pending the hearing and final disposal of the present Suit, the operation of the said Publication dated 14<sup>th</sup> March, 2014 qua the Plaintiff and the said ASCI letter dated 23<sup>rd</sup> April, 2014, issued by the Defendant No. 1 be stayed and the Defendant No.1 including its CCC, be restrained by an order and temporary injunction of this Hon'ble Court from in any manner enforcing and acting upon the said ASCI CCC Publication dated 14<sup>th</sup> March, 2014 qua the Plaintiff and the said ASCI Letter dated 23<sup>rd</sup> April, 2014 issued by the Defendant No. 1 (Exhibits-D and E);*

*(b) that pending the hearing and final disposal of the present Suit, the Defendant No.1 including its CCC, be restrained by an order and temporary injunction of this Hon'ble Court from in any manner from taking any cohesive steps against the Plaintiff and refrain the Defendant No.1 from instructing its members to act upon the said ASCI CCC Publication dated 14<sup>th</sup> March, 2014 qua the Plaintiff and the said ASCI letter dated 23<sup>rd</sup> April, 2014, issued by the Defendant No.1 (Exhibits-D and E).”*

16. The Notice of Motion to be placed for hearing and final disposal in normal course.

**(S.J. KATHAWALLA, J.)**