

**Vetting of CBI status reports by the Ministry**

\*546. SHRI PRABHAT JHA: Will the Minister of LAW AND JUSTICE be pleased to state:

(a) whether classified and confidential status reports of CBI, to be filed in the cases pending in various courts including the apex court, are being vetted by the Ministry;

(b) if so, the details thereof;

(c) whether the Ministry is entitled to vet the classified status reports of CBI in such cases;

(d) if so, the details of the provisions which allow the Ministry to vet them;

(e) if not, the reasons for interference in the functioning of autonomous organizations like CBI; and

(f) the details of the measures Government would take in this regard?

THE MINISTER OF LAW AND JUSTICE (SHRI ASHWANI KUMAR): (a) to (f) The Ministry of Law and Justice is mandated to provide legal advice to all Departments of the Government including retaining of Counsels to conduct cases of various Departments of Government in matters before courts throughout the country, including the Department of Personnel and Training (DoPT) and Central Bureau of Investigation (CBI), which is under the administrative control of DoPT.

This mandate is provided in the Government of India (Allocation of Business) Rules, 1961. The mandate includes advice on drafting, vetting of all documents where necessary and required, except those documents which are specifically excluded by specific statutes, rules or regulations. The Ministry of Law and Justice and the CBI have an established-institutionalized interface. The entire mechanism and edifice of functioning of CBI rests on maintaining a close liaison with Ministry of Law and Justice.

**Curbing of surrogate advertisements**

\*547. DR. JANARDHAN WAGHMARE: Will the Minister of INFORMATION AND BROADCASTING be pleased to state:

(a) whether the Ministry has recently held a meeting with various

Ministries/Departments seeking their views on the ways to curb the practice of surrogate advertising in the country;

(b) if so, the details of views expressed by them in this regard;

(c) whether Government has identified the companies which have been accused of promoting banned brands through advertisements; and

(d) if so, the details thereof and the regulatory mechanism to be put in place to check such surrogate advertising ?

THE MINISTER OF STATE OF THE MINISTRY OF INFORMATION AND BROADCASTING (SHRI MANISH TEWARI): (a) and (b) The issue of defining genuine brand extensions of tobacco and alcohol products, as distinct from the products launched to promote the sale of tobacco and alcohol products, has been under consideration in the Ministry for some time. There has also been a long pending demand from Broadcasters to allow bonafide advertisements of genuine brands using the brand name/logo which is associated with tobacco products or alcohol. Ministry had issued a Notification dated 27.02.2009 allowing advertisements of genuine brand extensions of tobacco and liquor products with certain conditions. However, the Notification could not be operationalised as the issue of making a distinction between genuine brand extension and surrogate advertisement could not be resolved.

A Committee of Secretaries (CoS) was constituted by the Government to examine the issue of TV advertisements on genuine brand extensions (Brands sharing names with tobacco and alcohol products) as distinct from surrogate advertisement (indirect advertisement) of tobacco and alcohol products. A note was circulated to the Department of Consumer Affairs, Department of Industrial Policy and Promotion, Department of Legal Affairs, Department of Health and Family Welfare and the Department of Revenue. A statement containing views of various Ministries/ Departments is given in the Statement-I (*See below*).

The CoS considered the views of various Ministries in its meeting held on 22.01.2013 and made following recommendations:

(i) Ministry of Information and Broadcasting and the Ministry of Health

and Family Welfare may jointly review the conditions prescribed in the February 2009 notification within one month and decide on its operationalization and inform the Cabinet Secretariat;

- (ii) in case Ministry of Information and Broadcasting and Ministry of Health and Family Welfare are unable to reach an agreement, the issue may be brought before the CoS again for consideration;
- (iii) issues regarding advertisements on genuine brand extension for both tobacco and alcohol products will continue to be dealt with together.

(c) and (d) Telecast of advertisements on private satellite/cable TV channels is regulated as per the Cable Television Networks (Regulation) Act, 1995 and Rules framed thereunder. Rule 7(2)(viii)(A) of the Advertising Code provides that no advertisement shall be permitted which promotes directly or indirectly production, sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants;

Provided that a product that uses a brand name or logo, which is also used for cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants, may be advertised on cable service subject to the following conditions that:

- (i) the story board or visual of the advertisement must depict only the product being advertised and not the prohibited products in any form or manner;
- (ii) the advertisement must not make any direct or indirect reference to the prohibited products;
- (iii) the advertisement must not contain any nuances or phrases promoting prohibited products;
- (iv) the advertisement must not use particular colours and layout or presentations associated with prohibited products;
- (v) the advertisement must not use situations typical for promotion of prohibited products when advertising the other products;

Provided further that:

- (i) the advertiser shall submit an application with a copy of the proposed advertisement along with a certificate by a registered Chartered Accountant that the product carrying the same name as cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants is distributed in reasonable quantity and is available in substantial number of outlets where other products of the same category are available and the proposed expenditure on such advertising thereon shall not be disproportionate to the actual sales turnover of the product.
- (ii) all such advertisements found to be genuine brand extensions by the Ministry of Information and Broadcasting shall be previewed and certified by the Central Board of Film Certification as suitable for unrestricted public exhibition and are in accordance with the provisions contained in sub-clause (i) to (v) of the first proviso, prior to their telecast or transmission or retransmission.

Details of action taken against TV channels for violation of this provision during last three years is given in the Statement-II (*See below*). The Government has set up an Electronic Media Monitoring Center to monitor content aired by private satellite TV channels with a view to bring to notice of this Ministry violations of Programme and Advertising Codes. An Inter-Ministerial Committee has also been set up to consider cases of violations and make appropriate recommendations for action against those satellite TV channels which violate the provisions of the Programme and Advertising Codes. Complaints of violation of Advertising Code by private TV channels are also referred to the Advertising Standards Council of India (ASCI), an industry-level Self Regulatory Body of Advertisers and Advertising Agencies, for their comments and action.

#### ***Statement-I***

*Views/Comments of concerned Ministries/Departments during examining the issue of TV advertisements on genuine brand extensions*

#### **(I) Department of Industrial Policy and Promotion**

Department of Industrial Policy and Promotion has stated that the

trademark, which is a private right, allows a producer to differentiate the goods and services being sold by him from that of another producer. Product differentiation enables improvement in market access. Article 15.2 of the TRIPS Agreement states that “the nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark”. This is adequately reflected in the Section 9 of the Trade Marks Act, 1999 also. However, registration of a trademark should not be confused with action, which may be required to be taken on account of serious public health concerns. These are two separate matters and should be treated as such.

**(II) Ministry of Health and Family Welfare**

Ministry of Health and Family Welfare have stated that TV advertisement on genuine brand extension (brand sharing name with tobacco products) amounts to the violation of the provision under section-6 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA, 2003).

**(III) Department of Revenue (Ministry of Finance)**

Department of Revenue has offered no comments stating that the said CoS Note does not contain any tax related issues administered by them.

**(IV) Department of Consumer Affairs**

The Department of Consumer Affairs is of the view that any move to permit advertisements of genuine products sharing brand name or logo with alcohol and tobacco products will lead to indirect advertisements of alcohol and tobacco products.

**(V) Department of Legal Affairs**

Department of Legal Affairs have concurred with the withdrawal of the Notification dated 27.2.2009 stating that as the issue of withdrawal of the said notification is raised by the referring Department, so the view of

the Legislative Department of Ministry of Law may also be obtained. The Legislative Department have viewed that if the administrative Ministry decides to withdraw the said notification, the provisions as inserted by the Cable Television Networks (Amendment) Rule, 2009 (notification dated 27.2.2009) in the Cable Television Networks Rules, 1994 would be required to be omitted by issuing a fresh amendment rules, with suitable modifications as may be considered appropriate by the administrative Ministry in consultation with the Department of Legal Affairs.

**Statement-II**

*Details of action taken against TV channels for telecast of advertisements in violation of Rule 7(2)(viii)(A) of Cable TV Rules 1994 during the last three years.*

Sl.No.	Advertisements	Action Taken
1.	Advertisement of a liquor product by “NDTV Good times” channel through telecast of the advertisement of ‘Blenders Pride Music CDs’.	A Warning was issued to the channel on 06.04.2010.
2.	Advertisement of a liquor product by “Star Anando” channel through telecast of the advertisement of ‘Blenders Pride Music CDs’.	A Warning was issued to the channel on 06.04.2010.
3.	Advertisement of products of ‘Haywards-5000 Soda’ and ‘Kingfisher Packaged Drinking Water’	A directive was issued on 17.06.2010 to all TV channels to stop carrying any advertisements of a product that uses a brand or logo which is also used for cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants.
4.	Advertisement of a product of ‘McDowell’s Soda’.	A directive was issued on 17.06.2010 to all TV channels to stop carrying any advertisements of a product that uses a

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		brand or logo which is also used for cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants.
5.	Advertisement of FTV Vodka.	An Advisory has been issued to FTV channel on 17.1.2013.
6.	Advertisement of “McDowell’s No.1 Platinum Soda” - The No.1 Spirit of Leadership.	The Advertising Standards Council of India (ASCI) was requested on 22.07.2011 to take up the matter with advertisers to take these advertisements off air. ASCI informed that the complaint has been upheld. It was also informed that the said advertisement has been withdrawn from all channels from 25th July, 2011.
7.	Advertisement of Kingfisher Beer on ET NOW channel	A Warning was issued to the channel on 12.9.2012.
8.	Advertisement of VB Best Cold Beer on Star Cricket channel	A Warning was issued to the channel on 12.9.2012.

#### **Corporate frauds**

\*548. SHRI NARESH AGRAWAL: Will the Minister of CORPORATE AFFAIRS be pleased to state:

(a) whether cases of fraud/ illegal transaction and accounts have been reported against some companies;

(b) if so, whether Government is investigating these cases;

(c) if not, the reasons therefor;

(d) the details of such cases, year-wise; and

(e) the details of the steps Government has taken to stop cases of corporate frauds?