

CREDIBILITY AT STAKE AS INDIAN NEWS NETWORK SUES NIELSEN FOR BILLIONS OVER ALLEGEDLY MANIPULATED TV RATINGS



New Delhi Television Limited, India's most celebrated news network and one of its oldest, has taken the Nielsen Co. to court for alleged contravention of the Foreign Corrupt Practices Act. NDTV has accused Nielsen of manipulating viewership data to reflect favourably towards acquiescing channels that were prepared to bribe its officials. In the lawsuit filed in New York court late last week, NDTV claims that unbridled and extensive manoeuvring of viewership data has been going on for eight years. This, says NDTV, was brought to the notice of top executives, who in the face of irrefutable evidences, promised that they would make amends. However, their promises proved hollow and there does not appear any visible sign of change. The rating agency gave NDTV a mere 42 counts, which made it look like a lot less people were watching the channel than there actually were and this was because, unlike other channels, they did not pay bribes and hence suffered. "Nielsen's wrongdoings, including, but not limited to, negligence, gross negligence, false representations, prima facie tort and negligence per se (based on violations of the Foreign Corrupt Practices Act and the Dutch Corporate Governance Code), have had catastrophic effects on customers, on the television industry, on advertisers and on and viewers in the US and overseas," said the 194-page suit filed on July 26. The Indian media giant is asking that for its corrupt practices, Nielsen should be barred from working within the country and should be asked to pack their bags and leave; furthermore, they are seeking billions in damages. Nielsen, a ratings research company, has its presence in more than a 100 countries in the world and is renowned and respected for its yeoman service since its inception in 1923. It earns more than \$5 billion a year. If the allegations against it are proved true it could seriously damage its reputation and standing. When asked for a comment, Nielsen declined, its spokesperson claiming that the company "has a longstanding policy of not commenting on pending legal matters." In the complaint, NDTV has specifically targeted TAM (Television Audience Measurement), a joint venture between Nielsen and Kantar Media Research. Both the companies were earlier strong competitors but, in the interests of business, rather than compete with each other agreed to join hands to monopolize their operations in India. They became the undisputed kings for marketing of TV viewership data in India. Television Audience Measurement, the progeny of the amalgamation of the two was run by a board that comprised of officials from both its parent companies. Nielsen, which previously owned The Hollywood Reporter, is said to be owned by private equity firms amongst whom are KKR, The Blackstone Group, The Carlyle Group, Thomas H. Lee Partners, Alpinvest Partners, Hellman & Friedman and Centerview Partners. These firms are seeking to exit the Nielsen business and have told the company's directors and its CEO David Calhoun to adopt austerity measures and avoid incurring costs, so that the share price is maintained at least in the short-term. The dictates of the "sponsors" to adopt cost-cutting measures, has led to the company flouting and disregarding their accountability to laws, with reckless abandon. This, NDTV says is one of the prime reasons why TV viewership data is being manipulated. "The primary reason that data could be so easily manipulated in India was due to the persistent refusal of Nielsen and Kantar to provide adequate funds for TAM to increase its sample size and invest in the systems/quality/security procedures," says the lawsuit. Among the allegations a precise allegation is that the results of viewership data are not really reliable as they are based on small numbers, just 8,000 households. Neither were security protocols adhered to in taking the samples. The situation, NDTV says was tailor-made for corruption to take root, in a country, where "politicians also own cable networks" and "PeopleMeters have been installed at the residences of government officials, where tampering of the data also takes place." Tampering with data was commonplace and known to occur frequently since 2004 and a recurrent topic of debate and discussion amongst affected industries. How tampering occurred was revealed by NDTV's executive vice chairperson Narayan Rao, who in a report on falsification of PeopleMeters, presented to the board of directors of News Broadcasters Association said that people were identifying houses that had PeopleMeters installed in them and manipulating them in such a manner that the meters would report viewership of particular channels by unmet guests, even though the television set was on in an empty room. Mr. Rao said, that this was done by "providing a separate TV in select panel homes for viewing while the TV linked to the meter was tuned to specified channels [and] misusing the guest button where up to 10 guests can be shown watching even when there is no one there." The people, who were doing it, were doing it in exchange of monetary inducements that some TV channels within the country were giving in exchange of manipulation of data, to show increased viewership for their channels. NDTV in its complaint said that all these overwhelming and undeniable evidence was presented to Nielsen this year. Following a letter written to Calhoun, apprising him of the problems, Nielsen's senior officials, including its executive VP Paul Donato and Chief Research Officer Robert Messemer, flew to New Delhi and met with NDTV's representatives. NDTV said that it would take the company to court if they failed to initiate remedial measures. Both Nielsen and Kantar, comprehending the gravity of the situation perhaps hastened by the threats of litigation, pledged to address the situation and increase the number of sampled households to a more realistic yardstick of 30,000 and by installing more security measures. Over the next few months more meetings took place. Towards the end of February, representatives from Nielsen were informed by a consultant about the modus operandi of TAM employees in taking financial inducements to fraudulently fix ratings for channels. In another meeting in April, representatives of Nielsen are said to have acknowledged that indeed there was truth in the allegations and "unequivocally admitted that the information provided by NDTV's Consultant was highly credible." Subsequently laptops from TAM officials were seized and sent to the U.S. for forensic analysis. What NDTV finds strange, for companies with such hard-earned reputations at stake, that even in the face of such damning evidence and their own acknowledgement and admission of corruption and manipulation within their company, they did not take any corrective action. NDTV alleges that their promises to make changes are sheer pretense and incorrect and fraudulent data flows unhindered, "recklessly and in pursuit of profits." NDTV says that the manipulated ratings have hit them hard and damaged their reputation, their goodwill and also lowered their profitability, as the false data reduced their brand-value. "This loss of hard-earned reputation and goodwill along with the damage to the profitability of NDTV as a result of low advertising revenues has in turn severely damaged the brand value of NDTV," it says in the lawsuit. The company says that the extent of the damage can be gauged from the price of its shares that from a high of Rs.501 at the beginning of 2008 have plummeted to lower than Rs.26 in December last year. The Indian Media giant is seeking monetary damages for fraud, negligence, tortious interference and breach of fiduciary duty. They are seeking almost \$1400 in damages. Since Nielsen is based in the Netherlands NDTV is also targeting Nielsen's top officers like Calhoun for violation of the Dutch Corporate Governance Code. Apart from seeking monetary damages, NDTV is also seeking a permanent injunction, barring Nielsen from functioning in India, until it implements appropriate corrective measures. Its attorney's Adam Finkel and Rohit Sabharwal in the complaint said, the company's bad and corrupt practices were not limited to India and were also prevalent in Florida, Turkey and the Philippines.