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**LEGAL FRAMEWORK ON COMPARATIVE ADVERTISING
IN THE EUROPEAN UNION, UNITED STATES AND INDIA
– A CONTEMPLATIVE STUDY**

Summary

In any society, each individual acts in a manner so as to achieve his individual interests. When every individual acts in such a manner, there is bound to arise certain conflict of interests, which are to be resolved by law. Law therefore seeks to regulate the extent to which each individual can act in pursuit of his interests to increase the effective fulfillment of interests by each individual.

Advertising has been with us in one form or another for the past 5000 years¹. It plays a significant role in today's economy and its presence in both print and electronic formats is likely to continue. One of the essential functions of advertising has been to persuade potential consumers that a particular product is superior to competing products. In today's market, they frequently attempt the task not just by saying 'our product is good', but by saying 'our product is better than the others'²– which is the basic concept behind comparative advertising.

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¹ J.S. Chandan et.al, *Essentials of Advertising*, 3 (1990).

² This is one of the most prevalent methods of advertising. The effectiveness of comparative advertising is shown not only by consumer studies, but by its continuing use by advertisers. According to a survey, approximately one-third of all advertising in the United States is comparative. See J.D. Beller, *Law of Comparative Advertising in the United States and Around the World: A Practical Guide for U.S. Lawyers and Their Clients*, 29, Int'l Law, 917 (1995).

Comparative advertising is defined as advertising that “identifies the competition for the purpose of claiming superiority or enhancing perceptions of the sponsor’s brand”, as opposed to advertising that promotes one’s product solely on its own merits.³ The comparison may be of a specific attribute of the product, such as price or taste, or it may be a general, all- encompassing comparison. This type of advertising, i.e., taking the competitor head-on and comparing the respective products, to show the advertiser’s superiority, is one of the most controversial areas in advertising today. This becomes problematic essentially because advertising is not always truthful. Sometimes it relies on misleading claims and sometimes it engages in deceptive advertising to sell products.

Keywords: Comparative Advertisement, misleading

Introduction

Advertising generally refers to communication in paid forms that is distributed at the initiative of economic operators, by means of television, radio, newspapers, banners, mail, internet, etc.⁴ Advertisements may be comparative in nature also. Such advertisements are sale promotion mechanisms wherein the products or services of one undertaking are compared with those of another. They are aimed at highlighting the advantages of the goods or services offered by the advertiser in comparison to those of the competitor.⁵

Comparative advertising aims at enabling the consumers to make an objective choice of products by giving them proper information of the other product/products in the market. However, the tendency is generally to highlight the merits of the goods endorsed and display only the negative points of the goods compared.

Comparative advertising can be theoretically divided into two types on which also relies its legality and tolerance, namely: puffery⁶ and denigration. Puffery is where the advertiser intends to draw the attention of the consumer

³ Comparative advertising is also defined as “a technique by which a product is compared to a competitive product with the intent of proving its superiority.” P.E. Pompeo, *To Tell the Truth: Comparative Advertising and Lanham Act – Section 43(a)*, 36, Cath U.L. Rev., 565 (1987).

⁴ The Legal Definition of Advertising Available at <http://www.agcm.it/en/consumer-scope-of-activities/legal-definition-of-advertising.html> (accessed 17.04.2016).

⁵ P. Miskoczi-Bodnar, *Definition of Advertising*, 3 European Integration Studies 25 (2004) available at www.uni-miskolc.hu/uni/res/kozlemanyek/2004/DEFINITION.doc (accessed 17.04.2016).

⁶ See also *Carlill v. Carbolic Smoke Ball Co.* [1892] 2 QB 484; *De Beers Abrasive v. International General Electric Co.*, 1975 (2) All ER 599; *Reckitt & Coleman of India Ltd. v. M.P. Ramachandra & Anr.* 1999 PTC (19) 741.

by making superlative and flamboyant claims and praises of his product which can be considered as mere positive assertions of opinion, rather than statements which can be precisely verified, measured or quantified. Statements of puffery are generally subjective in nature. When puffery tends to get aggressive and ends up portraying the competitor's product in a bad light, it takes the form of denigration. Comparative advertisement up to the stage of puffery is generally considered lawful and very much tolerable in all jurisdictions however almost all laws of the world heavily scrutinize denigration of any form.⁷

Along with the interests of the consumers, comparative advertisements also potentially influence the competitors and the proprietary right holders of the trademark, if the case is one of comparison with goods/services bearing a reputed trademark in the market. There is many a chance of the trademark being economically exploited by a comparative advertisement wherein consumers start associating the goods/services of the advertiser with that of the trademark owner.⁸

This paper herein narrates the laws relating to comparative advertising, as they exist in the European Union, the United States and India respectively. By traversing this path, the project attempts to compare these laws. An attempt is also made therein to find out the aptness of these laws and whether they are in parity with the situation in their respective territory and whether they are in need of any change.

Why is comparative advertising done?

In the world of advertising, it is well known that nothing said in an ad can be 100 percent true nor the formula to determine the meaning of an expression there can be as rigid as it is in the cases of determining the meaning of an expression in legal document is. So the question that arises is of determining the falsity requirement in the cases of advertisements.

Law in the cases of ads tolerates advertisers to make false statements to the extent that it doesn't mislead the consumers. Right term used for this kind of advertisement is puffing. The toleration of puffing has developed with the doctrine of caveat emptor. In the words of Professor, the "puffing' rule amounts to a seller's privilege to lie his head off, so long as he says nothing specific, on

⁷ P. Gokhale, S. Datta, *Comparative Advertising in India: Evolving a Regulatory Framework*, 4 NUJS L. Rev. 131 (2011).

⁸ *Ibidem*.

the theory that no reasonable man would believe him, or that no reasonable man would be influenced by such talk.” In these instances, exaggerated advertising or boasting upon which no reasonable consumer would rely is not grounds for legal action. Example of such advertising can be as product A is as good as B or this the most reliable, everlasting product. Even a vague, general claim of superiority will usually not be actionable.

For example, in *White v. Mellin*⁹, the House of Lords held that to say of a baby food that it was “far more nutritious and healthful than any other preparation yet offered” was not actionable. There was no “imputation of intentional misrepresentation for the purpose of misleading purchasers”, but merely a claim that the plaintiff’s food was inferior to the defendant’s.

However specific claims of superiority, shown to have been supported by research, if found false are less likely to be dismissed as harmless puffing. The court in the case of *De Beers Abrasive Products v. International General Electric Co. of New York*¹⁰ upheld this same line of argument. In the particular case, the defendants had circulated in the International Trade Market a pamphlet which sought to compare the effectiveness of the abrasives manufactured by the defendant with that manufactured by the plaintiff, concluding that the defendants’ abrasive was superior. The court held this to be more than a mere ‘puff’ and was capable of amounting to slander of goods.

Therefore mere ‘advertising puffs’ that praise, perhaps in exaggerated terms, an advertised product over a rival’s product in an attempt to win the customers is not actionable.

What amounts to mere puffing and what crosses the limit doesn’t always depend upon the nature of the statements. It depends upon various other factors as well. Sometimes what type of product is being advertised also has a bearing on whether a claim made in respect that product is actionable or not. In *Ciba-Geigy Plc v. Parke Davis & Co. Ltd.*¹¹, Aldous J stated: “I have no doubt that statements such as ‘A’s flour is as good as B’s’ or ‘A’s flour can be substituted in all recipes for B’s flour’ are puffs and not actionable. However that doesn’t mean that a similar statement would be puff and not actionable, if made in relation to a pharmaceutical product.”

⁹ [1895] AC 154.

¹⁰ [1975] 2 All E.R. 599.

¹¹ [1994] FSR 8.

The European Union

Regulation 2A of the Control of Misleading Advertisements Regulations 1988 defines “*comparative advertising*.” It stated that:

For the purposes of these Regulations an advertisement is comparative if in any way, either explicitly or by implication, it identifies a competitor or goods or services offered by a competitor.

Directive 84/450/EC concerning Misleading Advertisement was amended by Directive 97/55/EC in 1997 to include within its ambit, “*comparative advertising*.” It is *inter alia* stated that any advertisement which either explicitly or impliedly referred to another’s product, such an advertisement must abide by certain rules, enumerated in Article 3a, namely: the advertisement must not contain any misleading messages; it should not create confusion between the advertiser and the concerned competitor. The advertisement should also not take unfair advantage of the competitor’s trademark or other distinguishing material and should not present its goods or services as replicas of the other product and it does not discredit or degenerate it. Comparative advertisement should compare the products objectively, that is, the material should be relevant and must relate to verifiable features of the two products compared.

In 2006 Directive 2006/114/EC also known as the Advertising Directive, was adopted which consolidated the 1984¹² and 1997¹³ Directives. Among the few amendments was that the condition that the comparison should not be misleading. The most important amendment herein is that, Article 1, the 2006 Directive only aims to protect traders against misleading advertising. Whereas consumers are *inter alia* protected against, misleading advertising in the Unfair Commercial Practices Directive.¹⁴

Although member states have the freedom to have their own law on comparative advertisements, yet national courts can and also refer matters to the European Court of Justice for clarification whenever necessary.¹⁵ The European Court

¹² 84/450/EC.

¹³ 97/55/EC.

¹⁴ P. Reeskamp, *Is comparative advertisement a trade mark issue?*, EIPR 130 (2008).

¹⁵ P. Kamvounias, *Comparative Advertising and The Law: Recent Developments In The European Union*, EABR & ETLC Conference Proceedings (2010) available at http://www.cluteinstitute.com/proceedings/2010_Dublin_EABR_Articles/Article%20479.pdf (accessed 14.11.2012).

of Justice (ECJ) has always had a pro-advertising approach. Discussed below are some of the leading ECJ judgements on comparative advertisement.

Toshiba Europe GmbH v. Katun Germany GmbH¹⁶

The question herein was whether it is comparative advertising for a supplier of spare parts suitable for the products of an equipment manufacturer to indicate the manufacturer's product numbers in its catalogues. The ECJ held that it was permitted for a representation to be made in any form which referred, by implication or otherwise, to a competitor or to the goods or services which he offered. No actual comparison was necessary for an advertisement to be described as comparative but what was required was a reference to a competitor or his products. The ECJ further observed that an advertiser is not said to take unfair advantage of the reputation attached to distinguishing marks of his competitor if effective competition on the relevant market is something that is conditional upon a reference to those marks.

Pippig Augenoptik GmbH & Co. KG v Hartlauer Handelsgesellschaft mbH.¹⁷

This was another landmark decision of the ECJ on comparative advertising. Pippig operated three specialist opticians' shops in Austria, and obtained its supplies from around 60 different manufacturers. Hartlauer was a commercial company that had optical shelves where the spectacles sold were mostly of less known brands and were sold at low prices. Hartlauer circulated throughout Austria an advertising leaflet stating 52 price comparisons for spectacles carried out over six years which also showed a total price differential of ATS 3 900 on average per pair of spectacles, between the prices charged by Hartlauer and those of traditional opticians.

The advertising leaflet contained a comparison between the price and the same was also announced in Austrian radio and television channels as advertisements, in which, in contrast to the advertising leaflet, it was not stated that the spectacles compared had lenses of different brands. The Oberster Gerichtshof referred this case to the ECJ. The ECJ held in this case *inter alia* that the application to comparative advertising of stricter national provisions on protection against misleading advertising as far as the form and content of the comparison was concerned is precluded and that a price comparison did not entail the discrediting

¹⁶ European Court of Justice decided this case on 25th October 2001, Case No. C-112/99.

¹⁷ European Court of Justice decided this case on 8 April 2003, Case C-44/01.

of a competitor. The application to comparative advertising of stricter national provisions as compared to the EU Directives as far as the form and content of the comparison was concerned were precluded.

O2 Holdings Limited and O2 UK Limited v Hutchison 3G UK Limited¹⁸

The ECJ held that use by an advertiser of a sign identical with or similar to a competitor's mark was to be regarded as of a trade mark and could be prevented where necessary. However, the rights conferred by the trade mark were to be limited to a certain extent in order to promote comparative advertising and the associated benefits to consumers. The court further held that the proprietor of a registered trade mark is not entitled to prevent the use by a third party of a sign identical with, or similar to, his mark, in a comparative advertisement which satisfies all the conditions, laid down in Article 3a(1) of Directive 84/450 except when it is likely that the use of the trade mark was likely to cause confusion on the part of the public between the advertiser and a competitor, the advertisement would not satisfy the condition, laid down in Article 3a(1)(d) and would not be permitted.

There existed many a difference in national laws on comparative advertising. The October 1997 of Directive 97/55/EC which amended Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising signified a major shift in approach. Over the years, in the course of its deliberations, the European Court of Justice has clarified the scope of the Directive and in doing so has interpreted it in favour of the advertiser who engages in comparative advertising.

The United States

The Federal Trade Commission (FTC) in 1979 issued a *Statement of Policy Regarding Comparative Advertising*.

It defines comparative advertising in the following words:

For purposes of this Policy Statement, comparative advertising is defined as advertising that compares alternative brands on objectively measurable attributes or price, and identifies the alternative brand by name, illustration or other distinctive information.¹⁹

¹⁸ 12 June 2008, Case C-533/06.

¹⁹ Available at <http://www.ftc.gov/bcp/policystmt/ad-compare.htm> (accessed 6.02.2016).

The policy encourages the naming of or referencing to the particular competitor but warrants clarity and if need be, disclosure to avert confusion. Truthful comparative advertisements should not be restrained. Brand comparisons are permitted, provided the bases of comparison are identified clearly. Upholding the importance of comparative advertising, it observes thus:

Comparative advertising, when truthful and non-deceptive, is a source of important information to consumers and assists them in making rational purchase decisions. Comparative advertising encourages product improvement and innovation, and can lead to lower prices in the marketplace. For these reasons, the Commission will continue to scrutinize carefully restraints upon its use.²⁰

FTC permits disparaging advertising, as long as they are truthful and not deceptive. The FTC evaluates comparative advertising in the same manner as it evaluates all other advertisements and does not require a higher standard of substantiation by the advertisers for comparative claims.²¹ The National Advertising Division (NAD) of the Council of Better Business Bureaus, Inc., a self-regulatory body which commands the respect of national advertisers, advertising attorneys, federal and state regulators, and the judiciary; comparative advertising issues brought to its attention receive thorough review by highly competent attorneys who apply relevant precedent in reaching a determination of whether the advertising claims at issue are truthful, non-misleading, and substantiated.²² The decisions of NAD are appealable to the National Advertising Review Board (NARB). One of the vital benefits of using the NAD process is the ability to obtain a thorough review on the merits in only a fraction of the time required for litigation.²³

The comparative nature of an advertising claim can affect important issues of proof and burden shifting in a false advertising proceeding brought under the Lanham Act, in particular in cases brought under Section 43(a) of the Lanham Act, the plaintiff's burden of proof varies depending on the type of relief sought. Under Section 43(a) cases involving comparative advertising that specifically mention the competitor, plaintiffs benefit from a presumption of irreparable

²⁰ *Ibidem*.

²¹ J.E. Villafranco, *The Law of Comparative Advertising in the United States*, 16 IP Litigator (2010).

²² *Ibidem*.

²³ *Ibidem*.

injury. To recover monetary damages for a Section 43(a) violation, a plaintiff has to prove the elements of a false advertising claim, demonstrate that actual consumer deception or confusion occurred and that the false advertising claim was material to customers, causing actual injury to the plaintiff. When the challenged advertising makes a misleading comparison or reference to a competitor's product, causation and injury may be presumed.²⁴

The FTC on the other hand evaluates comparative advertising the same way it evaluates all other advertising and therefore does not require a higher standard of proof for substantiating comparative claims. Thus, advertisements that attack, discredit or otherwise criticize another product are permissible if they are truthful and not expressly or impliedly deceptive.²⁵

The FTC considers an advertisement to be deceptive if it includes a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances; the representation, omission or practice is likely to affect the consumer's conduct or decision regarding a product or service.²⁶

Better Business Bureau (BBB) and Advertising Self-Regulatory Council, earlier known as National Advertising Review Council are among the self-regulatory organizations that look into the case of misleading advertisements. BBB deals with the disputes between advertising practices and companies marketing.

In the case of *Markus Wilson v. Frito-Lay North America, Inc. and PepsiCo, Inc*²⁷. class action suit was filed where it was alleged that the Lay's Potato Chips were misbranded by Frito-Lay. It was claimed that Lay's Potato Chips were advertised to be healthy and contained 0 grams of Trans Fat. It went on to say that the snacks were good for certain group of population including the people with diabetes, children, adolescents, elders and pregnant women. The company failed to mention that every 50 chips contained more than 13 g of fat.

In the case of *Lorena Trujillo v. Avon Products Inc, Avon Products Inc*²⁸. was slapped with a class action over its skin care line. In the Californian Central District Court it was alleged that the Avon products such as Anew Clinical Advanced Wrinkle Corrector, Anew Reversalist Night Renewal Cream, Anew

²⁴ *Ibidem*.

²⁵ *Ibidem*.

²⁶ *Ibidem*.

²⁷ Case No. 12-cv-01586, U.S. District Court, Northern District of California, Oakland Division.

²⁸ Case No. 12-9084, California Central District Court.

Reversalist Renewal Serum and Anew Clinical Therafirm Face Lifting cream products were compared with the procedures found in the office of a dermatologist. It went on to say that its products repaired damaged tissue, boosted collagen and recreated fresh skin. Warning was also served to the company in the form of letter stating that the products were misrepresented to the consumers.

Maybelline was also slapped with a consumer fraud class action where it advertised its Super Stay lipstick to last for 14 hours. It also claimed that its Super Stay lip gloss lasted for 10 hours. The case is known as *Carol Leebove, et al. v. Maybelline LLC*²⁹, one of the plaintiffs alleged that her lipstick would wear off as soon as she had a meal or a drink. The lawsuit alleged that Maybelline had engaged in breach of warranty, unjust enrichment and violation of various consumer-protection laws³⁰.

Consumer fraud class action was filed in 2012 against Coty's Rimmel London Lash Accelerator in the Federal Court in California. In this case known as *Alagrin v. Coty Inc*³¹, it was alleged that the company Coty deceived its consumers by advertising that Rimmel London Lash Accelerator mascara with Grow-Lash Complex lengthened the eyelashes by 37% in a month and led to increase in the eyelash growth on regular usage.

India

Though the wrong of disparagement is age-old, the cases dealing with the same were rare to be found in the Indian Courts. The reason behind this seems to be essentially that the advertising market was not so strong until 1990 in India. It is only after the liberalization that multinational institutions have stepped in the every field of the economy and started exploring the advertising market. The present section with the help of the various cases shows the judicial attitude of the court in the cases of advertisement, which are essentially cases of regulating commercial speech for the greater benefit.

The question has arisen before the Supreme Court of India whether the right to advertise was a fundamental right to freedom of speech guaranteed under Article 19(1)(a). The Supreme Court held in *Hamdard Dawakhana v. Union of*

²⁹ Case No. 12-cv-07146

³⁰ Lucy C, available at <http://www.lawyersandsettlements.com/blog/tag/maybelline> (accessed 2.01.2016).

³¹ Case No. 12-cv-2868 JAH JMA.

India,³² that though advertisement was a form of speech, it was not constitutive of the concept of free speech. A different stand was taken by the Supreme Court later in the case of *Tata Press v. Mahanagar Telephone Nigam Ltd.*,³³ wherein it was observed that advertising is beneficial to consumers because it facilitates the dissemination of information and resultantly public awareness in a free market economy. It was held that advertising is a form of commercial speech, and therefore should be protected under Art. 19(1)(a).

Initially all matters concerning untrue and misleading advertisements were governed by Monopolies and Restrictive Trade Practices Act, 1969 and disputes therein were decided by Monopolies and Restrictive Trade Practices Commission. The Act was subsequently repealed by Section 66 of the Competition Act, 2002.³⁴

The consumer grievance forums under the Consumer Protection Act, 1986 enquire into complaints of unfair trade practices. Though this Act provides for an effective mechanism for grievance redressal of the consumer, it does not address the interests of manufacturers, sellers and service providers.³⁵

With the aim of regulating advertisement, the Advertising Standards Council of India (ASCI), a non-statutory body was established by an association of advertisers in 1985.³⁶ Chapter IV of the ASCI's Code for Self Regulation in Advertising provides for comparative advertising. Advertisements herein which contain comparisons with competing manufacturers and sellers are allowed in the interests of vigorous competition and free dissemination of information. subject to the following requirements being fulfilled:

- It should be clear what aspects of the advertiser's product are being compared with what aspects of the competitor's product.
- The subject matter of comparison should not be chosen in such a way as to confer an artificial advantage upon the advertiser or so as to suggest that a better bargain is offered than is truly the case.
- The comparisons should be factual, accurate and capable of substantiation.

³² AIR 1960 SC 554.

³³ (1995) 5 SCC 139.

³⁴ The Legal Definition of Advertising Available at <http://www.agcm.it/en/consumer-scope-of-activities/legal-definition-of-advertising.html> (accessed 17.04.2016).

³⁵ P. Miskoczi-Bodnar, *Definition of Advertising*.

³⁶ *Ibidem*.

- There should not be any possibility of the consumer being misled as a result of the comparison, whether about the product advertised or that with which it is compared.
- The advertisement should not unfairly denigrate, attack or discredit other products, advertisers or advertisements, directly or by implication.

There has been many a case in India dealing in comparative advertisement. Some of the important cases are discussed herein below.

Reckitt & Colman of India Ltd. v. M.P. Ramchandran&Anr.³⁷

It was contended by the plaintiff, manufacturer of the detergent clothing brand ‘Robin Blue’ that the defendant, manufacturer of the detergent clothing brand ‘Ujala’ in its advertisement, had intentionally displayed a container that was similar to the one in the plaintiff’s product and the price shown was also that of the plaintiff’s product.

The advertisement alleged that the said product ‘Blue’ was uneconomical, and that the product failed to dissolve effectively in water, and hence damaged clothes by leaving blue patches on them. It was observed by the court that this advertisement aimed at denigrating the product of the plaintiff by indicating to existing and future customers that the product was both uneconomical and ineffective.³⁸ Hence an order of injunction was passed against the defendant, restraining the defendant from broadcasting the advertisement henceforth.³⁹

Colgate Palmolive (India) Limited v. Anchor Health and Beauty Care Private Ltd.⁴⁰

The contention of the plaintiff in this case was that in the advertisement the defendant had stated that its product ‘Anchor’ was the only one that contained calcium, fluoride and triclosan and that the defendant had also claimed that ‘Anchor’ was the first toothpaste that could provide “*all round protection.*” The plaintiff argued that, the plaintiff being a pioneer company in dental care, the assertion made by the defendant, that it was the first and the only company which

³⁷ 1999 PTC (19) 741.

³⁸ P. Miskoczi-Bodnar, *Definition of Advertising.*

³⁹ *Ibidem.*

⁴⁰ 2009 (40) PTC 653.

contained the aforementioned ingredients and which gave all round protection was an act which amounted to denigrating the competing product.

The argument placed on behalf of the defendant was that the term ‘only’ referred to the fact that theirs was the only toothpaste comprising the aforementioned ingredients within the range of white toothpastes and the term ‘first’ was used with reference to the phrase “all round protection.”

The Court came to the conclusion that the concerned advertisement was sending a message to an average consumer that ‘Anchor’ was actually the only product containing the said ingredients, and also that it was the first one to ultimate protection to the teeth. This case herein reflects the trend of the court thus enunciated to protect the interests of the consumers from getting misled by any advertisement in particular a comparative advertisement intending to so mislead.⁴¹

Dabur India Ltd. v. M/S Colortek Meghalaya Pvt. Ltd.⁴²

In this case the appellant was a manufacturer of mosquito repellent creams: ‘Odomos’ and “Odomos Naturals.” The respondent manufactured a mosquito repellent cream and advertised the same under the name “Good Knight Naturals.” The court held herein that each has the right to try to affirm that his wares are good enough to be purchased, or of superlative quality. Three guiding principles were laid down by the court, namely:

- (i) An advertisement is commercial speech and is protected by Article 19(1) (a) of the Constitution.
- (ii) An advertisement must not be false, misleading, unfair or deceptive.
- (iii) Of course, there would be some grey areas but these need not necessarily be taken as serious representations of fact but only as glorifying one’s product.

The court however, went on to add that if an advertisement extended its scope beyond the grey areas so much so that it became false, misleading, unfair or deceptive, it would not entail the protection of Article 19 (1) (a). The court further added that in the process of glorifying one’s own product, the advertiser must not disparage or denigrate the rival product.

⁴¹ P. Miskoczi-Bodnar, *Definition of Advertising*.

⁴² 2010 (42) PTC 88.

Procter & Gamble Home Products v. Hindustan Unilever Limited.⁴³(The ‘Rin’ and ‘Tide’ dispute)

The petitioners were manufacturers of a detergent powder brand ‘Tide’, while the respondents were the manufacturers of the detergent powder ‘Rin’ and also the market rivals of ‘Tide’. The respondents aired a commercial which compared both the products and allegedly portrayed the petitioner’s product in a negative manner, claiming that ‘Rin’ was better than ‘Tide’ in providing whiteness to clothes. The petitioner herein applied before the court for an injunction to restrain the respondent from telecasting the advertisement, contending that the same had not stopped at merely puffing the advertised product, but had disparaged the competing product.⁴⁴ The Court held that there was an express denigration of the petitioner’s product because it was evident from the very format of the advertisement and the manner in which it was depicted that it had the overall effect of portraying the competing product in a poor light rather than promoting the seller’s own product. Court therefore, passed an interim injunction, restraining the petitioner from broadcasting the denigrating advertisement.

In a recent decision of the Calcutta High Court in *Hindustan Unilever Limited v. Procter & Gamble Home Products*⁴⁵ where it was alleged that the present advertisement of ‘Rin’ was a continuation of the previous advertisement against which an interim injunction was passed therein. Keeping in mind the facts of this case, the court held that considering the same as a continuation of the previous advertisement would be exaggeration and would be far-fetched and unsubstantial as there was no similarity between the two advertisements.

The law relating to comparative advertisement has thus, over the years emerged through case laws. The problem with respect to Advertising Standards Council of India has been that it has not been able to effectuate proper compliance because of lack of an enforcement mechanism and there also lies a problem of non-compliance if the complaint is filed against a non-member.⁴⁶ Therefore, the plausible future discrepancies can be obviated only by a proper piece of legislation exhaustively enumerating the law therein leaving no scope of confusion and vagueness.

⁴³ High Court of Calcutta, G.A. No. 614 of 2010, C.S. No. 43 of 2010.

⁴⁴ P. Miskoczi-Bodnar, *Definition of Advertising*.

⁴⁵ G.A. No. 1309 of 2011, A.P.O.T No. 200 OF 2011.

⁴⁶ P. Miskoczi-Bodnar, *Definition of Advertising*.

Laws applicable in India

The Advertising Standards Council of India (ASCI) is a non-statutory Tribunal set up in 1985 and incorporated under Section 25 of the Companies Act, 1956. It entertains and disposes of complaints based on its Code of Advertising Practice (CAP). The Code is based on certain fundamental principles, one of which is “To ensure the truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements”. The Advertising Standard Council of India (ASCI) adopted a code in 1985 for Self-Regulation in advertising. It is supposed to be a commitment to honest advertising and to fair competition in market place. The ASCI code deals with various provisions that pertain to advertisements. Chapter IV of the ASCI code is one which particularly deals with Comparative Advertisements and fairness in competition. The broad aspects that are covered in this chapter are:

- i. Advertisements containing comparisons with other manufacturers or suppliers or with other products including those where a competitor is named are permissible in the interests of vigorous competition and public enlightenment, provided:
 - a. It is clear what aspects of the advertiser’s product are being compared with what aspects of the competitor’s product.
 - b. The subject matter of comparison is not chosen in such a way as to confer an artificial advantage upon the advertiser or so as to suggest that a better bargain is offered than is truly the case.
 - c. The comparisons are factual, accurate and capable of substantiation.
 - d. There is no likelihood of the consumer being misled as a result of the comparison, whether about the product advertised or that with which it is compared.
 - e. The advertisement does not unfairly denigrate attack or discredit other products, advertisers or advertisements directly or by implication.
- ii. Advertisements shall not make unjustifiable use of the name or initials of any other firm, company or institution, nor take unfair advantage of the goodwill attached to the trade mark or symbol of another firm or its product or the goodwill acquired by its advertising campaign.
- iii. Advertisements shall not be similar to any other advertiser’s earlier run advertisements in general layout, copy, slogans, visual presentations, music or sound effects, so as to suggest plagiarism.

- iv. As regards matters covered by sections 2 and 3 above, complaints of plagiarism of advertisements released earlier abroad will lie outside the scope of this Code except in the under-mentioned circumstances:
 - a. The complaint is lodged within 12 months of the first general circulation of the advertisements/campaign complained against.
 - b. The complainant provides substantiation regarding the claim of prior invention/usage abroad.

Under the Monopolies and Restrictive Trade Practices Act, 1969 enacted with a view to curb monopolistic, restrictive and unfair trade practices the MRTP commission has to ensure that no unfair trade practice takes place. The Act defined an “unfair trade practice” under Section 36A to include any false representation that the goods are of a particular standard, quality, quantity, grade, composition, style or mode. It also includes the making of a false or misleading representation concerning the need for or the usefulness of any goods or services. Section 36A(1)(vii) makes even a warranty or guarantee of performance efficacy or length of life of a product or of any goods not based on adequate or proper tests, as an unfair trade practice. Section 36A(1)(x) makes a “false or misleading fact disparaging the good, services or trade of another person” as an unfair trade practice. However, the MRTP act was repealed by the Competition Act, 2002. But fortunately, the power to enquire into complaints of unfair trade practices is also vested with the Consumer Forum, in view of the fact that the provisions of Section 36A of MRTP Act, 1969 (extracted above) stands imported verbatim into the Consumer Protection Act, 1986 by the Amendment Act 50 of 1993. The definition of “unfair trade practice” found in Section 36A(1) of the MRTP Act, 1969, is adopted in pari materia in Section 2(1)(r) of the Consumer Protection Act, 1986. The law relating to unfair trade practice existing from 1969 under the MRTP Act and later imported into Consumer Protection Act, 1986 does not appear to have been taken advantage of by very many persons to prune misleading advertisements, despite the introduction of Cable Television Networks (Regulation) Act, 1995 and the Rules issued thereunder.

One of the earliest cases that came before the court on the issue of slander to goods was that of *Reckitt & Colman of India Ltd. v. Kiwi T.T.K. Ltd.*⁴⁷ before Delhi High Court in the year 1997. In this case the plaintiff company was engaged in manufacture and sale of liquid shoe polish under the name of Cherry Blossom Premium Liquid Wax Polish. Here the defendant is also

⁴⁷ *Reckitt & Colman of India Ltd. v. Kiwi T.T.K. Ltd.*, MANU/DE/0744/1996.

engaged in the manufacture of polish and one of the brands being manufactured and marketed by the defendant was 'KIWI' brand of liquid polish. Now, in an advertisement programme, the defendant shows a bottle of 'KIWI' from which the word 'KIWI' is written on white surface which does not drip as against another bottle described as 'OTHERS' which drips. The product shown as 'OTHERS' which is marked as 'Brand X' allegedly looks like the bottle of the liquid shoe polish of the plaintiff. Also, the bottle of 'OTHERS' had a red blob on its surface which allegedly represents 'CHERRY' which appear on the bottle of the plaintiff's product. Therefore the plaintiff had filed the suit for an injunction restraining the defendant from advertising the products in the manner they had been doing otherwise it would cause irreparable loss to its reputation, goodwill, brand, equity, etc. In response the defendant argued that there is nothing disparaging or defamatory conveyed through the said advertisements against the plaintiff, as no reference has been made to Cherry Blossom Premium Liquid Wax Polish in any of the advertisements. In the alternative, it was also argued by the defendant that even if a reference in the advertisement can be related to the plaintiff, there was nothing unlawful about the statement made by the defendant in the said advertisement as it was a true statement of fact and substance and, according to the defendant, no injunction can be granted against the said defendant. The court without deciding on the issue of whether the statements made by the defendants of its superiority were true or not disposed that the matter on the reasoning that a consumer who watches this advertisement on the electronic media only for a fleeting moment may not get the impression that the bottle is the bottle of the plaintiff. In the course of the judgment the court had reiterated the principles laid down by the Court in the case of Calcutta High Court of *Reckitt & Colman v. M.S.Ramachandran*.⁴⁸

⁴⁸ Court here reiterated the principles laid in an unreported case of Calcutta High Court of *Reckitt & Colman v. M.S. Ramachandran*: Five principles laid down by the Court to decide as to whether a party is entitled to an injunction were as under: "(I) A tradesman is entitled to declare his goods to be best in the words, even though the declaration is untrue. (II) He can also say that my goods are better than his competitors', even though such statement is untrue. (III) For the purpose of saying that his goods are the best in the world or his goods are better than his competitors' he can even compare the advantages of his goods over the goods of others. (IV) He, however, cannot while saying his goods are better than his competitors', say that his competitors' goods are bad. If he says so, he really slanders the goods of his competitors. In other words he defames his competitors and their goods, which is not permissible. (V) If there is no defamation to the goods or to the manufacturer of such goods no action lies, but if there is such defamation an action lies and if an action lies for recovery of damages for defamation, then the Court is also competent to grant an order of injunction restraining repetition of such defamation."

The next case that came before the court was of *Hindustan Lever Ltd. v. Colgate Palmolive (I) Ltd.*⁴⁹ in this case the appellant had given advertisement in the print, visual and hoarding media, through which it claimed that its toothpaste 'New Pepsodent' was "102% better than the leading toothpaste. The advertisement also contained a 'schematic' picture of samples of 'saliva/smear'. The advertisement depicted on one side of the advertisement a pictorial representation of the germs in a sample taken from the mouth of a person hours after brushing with 'the leading toothpaste'. And another pictorial representation was of the germs from a similar sample taken from the mouth of another person who used the 'New Pepsodent'. The former shows large number of germs remaining in the sample of saliva where the 'leading toothpaste' is used and the latter shows almost negligible quantity of germs in the sample of saliva where 'New Pepsodent' is used. Apart from this the advertisement also spoke of tests conducted at the Hindustan Lever Dental Research Centre and concluded that the appellant's product was based on a germ-check formula which was twice as effective on germs as the leading toothpaste was. Also in the TV advertisement of the appellant, two boys were asked the name of the toothpaste with which they had brushed their teeth in the morning. The advertisement showed 'New Pepsodent' 102% superior in killing the germs, which is being used by one of the boys. So far as the other boy is concerned, who had used another toothpaste, which was shown to be inferior in killing germs, the lip movement, it was alleged, indicated that the boy was using 'Colgate' though the voice was muted. Additionally, when this muting was done there was a sound of the same jingle as it was in the usual Colgate advertisement. On behalf of plaintiffs by giving data to the Court it was shown that the 'leading toothpaste' referred to them only.⁵⁰ On the basis of the same it was contended that reference in the advertisement to 'leading' toothpaste must be taken to be a reference to 'Colgate Dental Cream' and this was also argued to be obvious from the use of the word 'the' before the word 'leading' in the TV and newspaper advertisements. In this case appellants argued that no action could be taken against the Hindustan Lever Ltd. because the plaintiffs had not yet discharged the burden of proving the statements made by them false. Court again in the present case without going into the merits of the case refused to interfere with the order of

⁴⁹ *Hindustan Lever Ltd. v. Colgate Palmolive (I) Ltd.*, MANU/SC/0899/1998.

⁵⁰ Monopolies and Restrictive Trade Practices Commission, in the present case had found that in as much as the overall market share of Colgate was 59% in the second quarter of the year 1997 and the appellant's share was 27%.

interim injunction awarded by Monopolies and Restrictive Trade Practices Commission on the ground that the matter was still pending before the commission and the order made was discretionary in the nature.

The next case that came before the court was the case of *Pepsi Co. Inc. v. Hindustan Coca-Cola*.⁵¹ The plaintiffs in the present case contended that the commercials of the defendants disparaged their products, which resulted in the dilution of the goodwill and reputation enjoyed by them. The plaintiffs add that at various parts of the commercial, the drink was named as “PAPPI”, which was an obvious reference to the “Pepsi”. Thereby their product has been mocked and ridiculed by terming Pepsi as a “Bachhonwali” drink and therefore and showing the preference of kids of Pepsi over Thums Up. The plaintiffs therefore sought an injunction from the Court that would restrain the defendants from further tele-casting the commercials. The arguments of the defendants on the other hand are on the lines of the fact that the trade rivalry between the two firms ought not to spill over into the court of law. They sought to justify their commercial as nothing more than mere puffing of their own products and any reference made to the plaintiff’s product was only as a joke on their advertisement. The Delhi High court in the present case, while deciding the issue went into the definition of the term disparagement as defined in authoritative sources such as the Black’s Law Dictionary and the Webster’s Dictionary. The Court further referred to the case of *Reckitt & Coleman India Ltd. v. M.S. Ramchandran and Anr.*,⁵² where the court laid down 5 principles to decide whether a party was entitled to an injunction. The court further noted that in the same case, the court had come to the conclusion that comparative advertisements per se were permissible but what was impermissible was any disparagement of the goods of the competitor in the process. With this in mind, the court laid out three guidelines for the determination of whether an action for disparagement lay, they are:

- (1) A false or misleading statement of fact about a product.
- (2) That statement either deceived, or had the capacity to deceive, substantial segment of potential consumer, and
- (3) The deception was material, in that it was likely to influence consumers’ purchasing decisions.

The court in the present case concluded that in the present case the comparisons drawn in the course of the commercial were merely attempts at puffing up their own

⁵¹ Pepsi Co. Inc. v. Hindustan Coca-Cola, MANU/DE/1269/2001.

⁵² 1999 PTC (19) 741.

products. Further the court noted that there was no evidence presented on the part of the plaintiff as to how this particular commercial had adversely affected its business. Thus the conditions laid down above were found not to be fulfilled in the case of the defendants' commercial. On these accounts the court dismissed the plaint.

Subsequently in 2003, the same issue came up before the same court for hearing as *Pepsi Co. Inc. and Ors. v. Hindustan Coca Cola Ltd. and Anr*⁵³ and substantively the same arguments were raised on both sides. But this time Usha Mehra J., gave a totally contrary interpretation to the same facts on the ground that:

The vast majority of the viewer of the commercial advertisement on electronic media are influenced by the visual advertisements as these have a far reaching influence on the psyche of the people, therefore, discrediting the product of a competitor through commercial would amount to disparagement as has been held by the High Courts and the Supreme Court of India as well as the Law laid down by Courts in U.K. & U.S.A.

The court in the present case laid down a different set of guidelines on which to determine an action of disparagement, namely:

- (1) Intent of commercial.
- (2) Manner of the commercial
- (3) Story line of the commercial and the message sought to be conveyed by the commercial.

Of these the manner of the commercial was considered most important and any commercial. In accordance with the decision of the Supreme Court in *Hindustan Lever v. Colgate Palmolive (I) Ltd.*⁵⁴, the court maintained that any ridiculing of the plaintiffs' products would amount to disparaging whereas a mere comparison would not. In the present case, the Judge concluded that various terms such as "bachhonwali drink" and "yehhai wrong choice baby" were of ridiculing nature and hence amounted to disparagement of the appellant's products. The court therefore accepted the appeal and passed an order of restraint in respect of the commercials.

In the same year before this case the Delhi high Court had dealt with another case of *Reckit Benckiser (India) Limited v. Naga Limited and Ors.*⁵⁵ In this case the plaintiff filed the suit for permanent and mandatory injunction, against the defendan-

⁵³ MANU/DE/0896/2003.

⁵⁴ MANU/SC/0899/1998.

⁵⁵ MANU/DE/0299/2003.

t's television commercial. The commercial depicted a woman in an advanced stage of pregnancy needing urgent medical assistance during a train journey. Then doctor calls for hot water and is handed a cake of soap, which is rejected by the lady, stating that an antiseptic soap is needed. It is not in dispute that the soap which was handed over to the doctor is identifiable by viewers as the Plaintiff's product, namely, Dettol Soap. The doctor further states in the commercial that "at a time like this, you do not need just antiseptic, you need a protector". The Defendant's Ayurvedic soap is then shown and it is concurrently stated that it is body 'rakshak' soap, the first Ayurvedic soap that completely removes all seven kinds of terms and protects from infection. The Plaintiff here alleged that this commercial disparages its Dettol Soap and the intention behind the commercial is malicious. In these facts, Vikramjit J., opined that the T.V. commercial has the effect of making the viewer alive to two factors-- firstly, that Dettol Soap is not an antiseptic and, secondly that the Defendant's Ayush Soap is an antiseptic soap and a protector from infection. During the course of the judgment, it was brought to the notice of the court that the Dettol soap is neither labelled nor marketed as an anti-bacterial toilet soap or "as an antiseptic soap" but is simply labelled as a soap which "helps ensure general skin cleanliness and high standard of personal hygiene". Counsel of defendant here vehemently emphasized that in contradiction to this soap, 'Dettol liquid' is manufactured under a license issued under the Drugs Act and is marketed as an antiseptic germicidal. On the other hand the defendant's soap Ayush is based upon the Ayurvedic system of medicine and is manufactured under a drug licence granted by the Director of Drugs, Tamil Nadu. He further observed that the "consumers perceive Dettol soap as strong and effective in maintaining personal hygiene and regard it as an efficient antiseptic soap that kills harmful germs and bacteria and ensures good health and hygiene....." So if a competitor makes the consumer aware of his mistaken impression, the Plaintiff cannot be heard to complain of such action. Court further held that to hold a party liable for libel when all that has been stated by the competitor is the truth. On the grounds the court did not grant any injunctory relief.

The next case that came before the court was the case of ***Dabur India Ltd. v. Colgate Palmolive India Ltd.***⁵⁶ In this case the principles that were elucidated in the case of ***Reckitt & Colman of India Ltd. v. Kiwi T.T.K. Ltd.*** were reiterated upon by the court. The court said that comparative advertisement is allowed if:

- a) The trader is entitled to declare that her goods are the best, even though the declaration is untrue.

⁵⁶ AIR 2005 Delhi 102.

- b) One may also say that her goods are better than her competitors, even though such statement is untrue.
- c) For the purpose of saying that her goods are the best and that her goods are better than her competitors, she can even compare the advantages of her goods over the goods of the others.
- d) One, however, cannot while saying her goods are better than her competitors, say that her competitors' goods are bad. If she says so, she really slanders the goods of her competitors. In other words she defames her competitors and their goods, which is not permissible.
- e) If there is no defamation, to the goods or to the manufacturer of such goods no action lies, but if there is such defamation, an action lies and if an action lies for recovery of damages for defamation, then the court is also competent to grant an order of injunction restraining repetition of such defamation.

These principles were further elaborated upon in the case of *Annamalayar Agencies v. VVS and Sons Pvt. Ltd. and Ors.*⁵⁷ In this case also there were three tailors who had adjacent working counters put up notices in their respective windows saying 'the best tailor in the world', 'the best tailor in the town', the 'best tailor in the street'. This was a clear case of puffing and nothing more and in such a case it was decided that it was within the boundaries of harmless advertising but trying to promote one specific product or services by clearly abusing another is not appreciated in law. Though in any situation, the choice finally lies with the consumer. The lack of creative or smart advertisement has indeed taken a toll on the very concept of 'comparative advertisement'. There is no denial that it is a fiercely competitive market out there but this can never be an excuse for resorting to disparagement of other goods or services.

The next case that came before the Delhi High Court was between *Marico Ltd. v. Adani Wilmar Ltd*⁵⁸. The facts of the case are that both companies sell cooking oil under the names Saffola (Marico) and Fortune (Adani Wilmar) respectively. The plaintiff, filed two suits against the defendant restraining them from broadcasting, printing and publishing advertisements of its product alleging that it disparaged the goodwill and the reputation of the plaintiff's product. The plaintiff's also claimed that the statements were also misleading as they were not backed up by adequate research or scientific study. The court using the principles already discussed above decided on the question whether there was disparagement in the

⁵⁷ 2008(38) PTC37(Mad).

⁵⁸ 975 (2) All ER, Division Bench Delhi High Court, India.

negative. They said that the said advertisements were not disparaging and were only comparing the advantages of the defendant's goods over the goods of others. The court also said that the advertisements did not denigrate the plaintiff's product. On the question of whether the claims made by the defendant were misleading or not the court relied on *Dabur India Ltd. vs M/S Colortek Meghalaya Pvt. Ltd*⁵⁹ and by looking at the intent, message and the story line of the advertisement decided that the ad was not about the comparative cholesterol lowering ability of Oryzanol but was more about showing that the defendant's product was sufficient to meet the daily requirements of the human body. The court said that it is not required of the defendant to declare each and every detail regarding the cholesterol lowering ability of Oryzanol as long as the intent, story line and message that has to be conveyed by the advertisement is not entirely untrue.

The next case that came before the Delhi High Court was between *Colgate Palmolive (India) Ltd. v. Hindustan Unilever Ltd.* In the present case the plaintiff brought an action against the defendant for its advertisement relating to its product 'Pepsodent GermiCheck Superior Power' alleging that the ads disparaged Colgate's product – Colgate Dental Cream Strong Teeth. The plaintiffs claimed that the claim made by HUL that Pepsodent GermiCheck has '130% attack power' was blatant lie. Giving out such false statements amounted to misleading the consumers and violated several provisions of the ASCI code as well as The Drug and Cosmetics Act, as it amounted to misbranding as well. The plaintiff's also claimed that the TV commercial depicts that Colgate's product could cause cavities and was therefore disparaging as well. The plaintiff also stated that HUL has a history of making false claims in respect of its products. The defendant relied on the *Dabur Colortek* case to show that courts have allowed comparative advertisement and have allowed manufacturers to claim superiority over their competitor's products if there is no denigration of the other product. The defendants then claimed that the tests that were conducted by HUL *in vivo* and *in vitro* supported their claims that their product had 130% germ attack power and that no claim was baseless. The Court relying on cases such as the *Dabur India v. Colortek Meghalaya Pvt. Ltd.* and the *Reckitt and Colman of India Ltd. vs. M.P. Ramchandran and Anr.* which have been discussed before dismissed the case by saying that HUL was not denigrating the product of Colgate. The Court said that it is unable to identify any unfairness in this practice that may attract the clauses of ASCI code. They also said that such comparative advertising is permissible as

⁵⁹ FAO (OS) No. 625 of 2009, High Court of Delhi: New Delhi, Decided on 2 February, 2010.

long as the competitor's product is not derogated and disgraced while comparing. The Court also said that, too much cannot be read into the expressions of each individual character in the advertisements. The expressions and effects used in the advertisement only showed that Pepsodent was a better product but did not disparage Colgate's product. Also, the court said that as there is a comparison of products and an attempt to show that one is better than the other, then obviously both boys cannot have happy faces. The court also said considering HUL had conducted tests that showed that its product was 130% superior precisely then it is the duty of HUL to keep its consumers informed of the same.

Conclusion

The cases discussed above have one thing in common, the practice of puffing. As per my understanding any incident of puffing must amount to an "unfair trade practice" under the Consumer Protection Act as doing so would not be in public interest and should not be permitted. This observation comes from the case of *Colgate-Palmolive (India) Ltd. v. Anchor Health and Beauty Care Private Ltd.*⁶⁰ wherein the court decided that all puffing was illegal. The reasons which prompted the Court in reaching this conclusion were primarily related to consumer protection. It held that the question of the legality of puffing needed to be decided by balancing the right to freedom under Article 19 along with reasonable restrictions on that right in the form of consumer laws. The Court noted that the contrary decisions of other Courts were based on old English cases decided before consumer protection laws were put in place. Therefore, any proper determination of the legality of puffing must necessarily take into account consumer protection laws in India. The Court's motivation is clear from the following statement, "*But the recognition of this right (to puff) of the producers, would be to de-recognise the rights of the consumers guaranteed under the Consumer Protection Act, 1986.*" The basis for the rejection of prior Indian cases was that they relied on British law prior to the developments in consumer protection. But, the Indian cases were nonetheless decided after consumer protection laws came into effect. This means that Indian law on the point kept the two causes of action separate – an action for protection of consumer interests was conceptually distinct under Indian law from the tort of commercial disparagement. The Court seems to have

⁶⁰ *Colgate-Palmolive (India) Ltd. v. Anchor Health and Beauty Care Private Ltd.*, 2009(40) PTC653(Mad).

equated the two, thereby also equating the interests of consumers and the interests of competitors. Of course, *none of the other decisions held that consumers would not have a remedy if there was in fact a violation of consumer rights; they only held that this was not a relevant factor in considering questions vis-à-vis competitors.* In other words, the approach of the Court does not take into account the fact that comparative advertising can have two effects. It can, of course, have an impact on consumer interest – and the Consumer Protection Act is relevant in adjudicating on disputes between consumers and the advertiser. But, comparative advertising can also have an effect in terms of commercial disparagement – it can disparage the trade name of a competitor. *The previous decisions did not take into account the impact of consumer laws because they were concerned solely with this second effect.* This second effect is the basis of the tort of disparagement. And the case before the Court was a case between two competitors for disparagement – not between a producer and a consumer.

This decision brings to notice the fact that Indian courts till now were ignoring the Consumer Protection aspect of such cases and there is a need for Courts to start looking at this aspect as well to ensure that consumer interest are also taken care of. Cases like *Colgate v. Pepsodent* are needed to ensure that consumer interest are also taken care of and not ignored.

Comparative advertising holds significance in the market as it encourages product improvement and innovation; it also helps in lowering prices and thus, acts as a price leveller. However, the misuse of this form of advertising may mislead the consumer or may adversely affect the interests of the competitor whose goods are so compared.

The European Union, United States and India, all three have recognized the importance and magnanimity of comparative advertising in the society. The laws of these countries aim to protect the consumer from getting confused by deceptively similar products and also protect the competitor by preventing his product from getting adversely affected by disparaging comparative advertisements. Mere puffery is tolerated to a substantial extent in the three laws, however, the degree and mechanism of protection afforded to various forms of comparative advertising varies keeping in mind the scenario and requirement of the particular land.

The laws relating to comparative advertising in the European Union and the United States seem apt for the respective situations, however, the developing competition in the market and the fast emergence of new products makes one think that with this fast pace, the laws of these lands will develop further and

mould to cater to the needs of its people. The legal framework in India, however, needs to develop substantially. The law relating to comparative advertising must take care of the interests of all the concerned stakeholders, including manufacturers, advertisers, competing parties and consumers.⁶¹ The Consumer Protection Act, 1986, for instance, has proved insufficient as it excludes from its ambit competing manufacturers and sellers.⁶² A regulation scheme within the market should also be encouraged.⁶³ Courts should be cautious to intervene, keeping in mind the fragility of the situation. Nevertheless, it can be concluded that the legal framework of India, though not ideal, has been successful to a great extent, in addressing the adverse effects of comparative advertising in India.

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⁶¹ P. Gokhale, S. Datta, *op. cit.*

⁶² *Ibidem.*

⁶³ *Ibidem.*