



LEGAL IMPLICATIONS OF COMPARATIVE ADVERTISEMENT IN INDIA

Prithivi Raj

Assistant Professor, Faculty of Law, ICAFI University, Himachal Pradesh, India

Murtaza S. Noorani

Student, A.K.K. New Law Academy, Pune, India

ABSTRACT

The issue of legality of comparative advertising has given rise to numerous debates. The reason lies in the fact that basically a comparative advertisement is likely to give more information than a usual advertisement and there may be likely abuse or it may be beneficial to the consumers. In addition to this, the consumers may accord more emphasis to the comparative advertisements than the non-comparative ones. The advertisers basically advertise with an object to increase his sale of product or services and to inform the consumer about the quality, but the competitor with whom the products are compared is concerned with the way the products are being compared and moreover the reputation and good will are also at stake. In this research paper the Author had also focused upon legal regime relating to comparative advertising in India and also the legal approaches made in European Union, United Kingdom and United States. To probe into the statutory framework of comparative advertising in India the Author has taken International Law and Role of Judiciary to carve out the present position in India.

Key words: Comparative Advertising, Advertisement, Legal Implications on Advertisement.

Cite this Article: Prithivi Raj and Murtaza S. Noorani, Legal Implications of Comparative Advertisement in India, *International Journal of Management (IJM)*, 11(12), 2020, pp. 3624-3634.

<http://www.iaeme.com/IJM/issues.asp?JType=IJM&VType=11&IType=12>

1. INTRODUCTION

Advertising has become an inextricable part of contemporary life. The roots of advertising can be traced all the way back to the idea of trade. The primary goal of advertising is to influence the perception or actions of the people to whom it is directed, and it seeks to draw attention to brands, goods, or services among potential customers and the general public. It is also regarded as a vital source of knowledge dissemination. Since it promotes contact between producers and customers, advertising has become more relevant than ever. Comparative advertising is one of

these direct marketing strategies that can be said to affirm the competitive spirit that exists in the industry. Economic globalisation refers to the broadening and deepening of economic interconnections around the world. Massive capital and technology flows have boosted trade in goods and services. Markets have expanded their scope around the world, forming new ties between national economies in the process. The main building blocks of the global economic order in the twenty-first century have emerged as huge transnational companies, strong international economic institutions, and large regional trading networks. Advertisers in today's world are eager to gain a competitive advantage over their competitors. Companies are devising novel ways to convey information to consumers in order to affect their purchasing decisions in order to attract consumer attention and increase product sales. The essence of the comparative statements is variable. There may be an overt or implied reference to a competitor. Positive or negative comparisons between products may be made with an emphasis on similarities (positive comparisons) or differences (negative comparisons). There may be superiority claims, implying that the marketed product is superior to the one being compared, or equivalence or parity claims, implying that the competitor's products are equivalent to the one being compared.

So, under what circumstances an advertisement shall be determined to be actionable that is based on competitor's name, mark, logo is determined by the specific laws in different countries. The potential liability of a company in case of false advertising generally is governed by the law relating to false advertising and unfair competition. When an advertisement uses a competitor's name, mark, logo, or has the potential to contain disparaging, unfair, baseless, incomplete, or false comments and comparisons of competitor's products, ratings, benefits, services, or other characteristics, it is considered false advertising. There are advertisements in which Coca-Cola and Pepsi challenge each other, as well as advertisements in which mobile companies compare tariffs and other comparative ads. So the key question is whether a company can compare the relative qualities of its products and services to those of named competitors without violating trademark or unfair competition laws. Countries have taken a variety of approaches to comparative advertising, some of which are at odds with one another. By its very nature, comparative advertising has the potential to mislead consumers and disparage identified competitors. As a result, comparative advertising is prohibited in many countries.

2. RESEARCH METHODOLOGY

This legal research relating to comparative advertising has been carried out to find out the law on comparative advertising and how it has evolved in different countries. An analytical research been carried out to know the existing domestic and foreign laws. During the collection of data the choice of the designs of methods is constantly modified on the basis of the ongoing analysis to find out the solution to the inquiries. This work is basically a doctrinal legal research in which the statutory provisions and the cases have been analyzed. Critical research approach has been adopted to find the present law relating to comparative advertising in India and its legal implications and the effect on the various interest holders. For this purpose, secondary source of data such as judicial pronouncements and academic writings have been gathered and evaluated.

3. LITERATURE REVIEW

Rodney D. Ryder, Brands, Trademarks and Advertising, LexisNexis Butterworths India, New Delhi, 2003.

The Book is an important guide to understand the various aspects of branding and advertising. The literature presents a holistic approach towards the legal framework of protecting brands. The Book covers topics like the structure of the brand, throws light on the importance of product

packaging and appearance, the legal framework covering intellectual property protection, various aspects of comparative advertising, the future of trade mark, brands and advertising and such other topics revolving around the core areas of brand and advertising.

Subhash Malviya, Advertising and Promotion, Adhyayan Publishers and Distributors, New Delhi, 2007.

The Book is comprehensive study of the advertising and promotion industry, analyzing and assessing its role in the world we are living. The industry consists of advertisers, the media and the advertising agencies. This triad has brought about immense changes in the consumer perception and the overall industry. The book navigates through the historical goals and functioning of the advertising world and an in-depth understanding of the advertising sector. The literature also includes the current trends and developments in advertising and its changing nature.

Parth Gokhale and Shriyani Datta, "Comparative Advertising in India: Evolving a Regulatory Framework", The NUJS Law Review, Vol. 4, Issue 1, 2011, pp. 133-49.

The Article is a significant research work relating to comparative advertising in which the authors have examined the role of the existing forms of regulation in both domestic and international jurisdictions, in addition to drawing attention on significant case law, on the subject. The literature has taken into account the interest of various stake holders in arriving at a regulatory framework for comparative advertising.

Paul Spink and Ross Petty, "Comparative Advertising in the European Union", International and Comparative Law Quarterly, Vol. 47, 1998, pp. 855-76.

The Article contained a detailed analysis of the position of comparative advertising in European Union and traced the historical development, the rationale and substance of the various EU legislations with specific focus on the current EU legislation. The position in UK is also dealt and how the current EU legislation has an impact on the UK law.

Stewart E. Sterk, "The Law of Comparative Advertising: How much worse is "Better" than "Great", Trade Mark Report, Vol. 67, 1977, pp. 368-406.

This Article deals in detail with the historical development of comparative advertising as to how the concept evolved and what triggered its growth. The literature also clarifies the position of comparative advertising in common law and how the law of comparative advertising has evolved and the statutory framework.

G.V. Narsimha Rao, "Comparative Advertising- Boon or Bane to Consumer Interest?", Nalsar Law Review, Vol. 7, No. 1, 2013, pp. 26- 37.

The literature is a comprehensive overview of comparative advertising laws with specific reference to consumer's interest. The position of law relating to advertising vis-a-vis rights of the consumers has been dealt with regard to laws prevalent in United States, European Union and United India. In India also the various laws dealing with comparative advertising have been comprehensively covered along to judicial trends.

Uphar Shukla, "Comparative Advertising and Product Disparagement vis-à-vis Trademark Law", Journal of Intellectual Property Rights, Vol. 11, Nov. 2006, pp. 409-414.

This article analyses the law on comparative advertising and product disparagement, in relation to trademark law in the light of relevant sections of the Trade Marks Act, 1999.

Vandana Pai and Jyotsna Balakrishnan, "When Comparisons are Odious: Comparative Advertising and Disparagement", Student Advocate, Manupatra, Vol. 13, 2001, pp. 208-218.

This article has dealt with an important concept of comparative advertising which is disparagement. There is clear difference make out between puffery and disparagement with the help of case laws with specific reference to the provision of MRTP Act.

4. DISCUSSION AND ANALYSIS

Comparative advertising is a marketing and promotional strategy that has been adopted by various marketers to promote their product and making superior claims. Comparative advertisement is the comparison of one or more attributes of a product with that of a rival company. It can be direct comparison or an indirect one. Usually this strategy is adopted to influence consumers buying decisions. However, the consumers can be misleading with false or distorted information and it may also entail legal consequences in case of disparaging statements made against the rival company.

In order to understand the concept of Comparative advertising, it is necessary to understand its meaning and the different kinds of comparative advertising. It is important to trace its growth from mere using "Brand X" to directly naming the competing brand and how the countries have accepted it and to what extent it is limited or restricted. Then, moving further there are advertisements that make superior claims about one's own product and the cases where the puffing is traversed to denigration and how the Court has limited or allowed such practices. There are several advantages and disadvantages in using technique of comparative advertising which is also worthwhile to note. Comparatively advertising is primarily affecting the advertisers, rival or competing brand and the consumers. The manner in which these are affected and considerable impact on the parties shall be discussed in this chapter by the researcher. So, this technique of advertising in which there is comparison of the features of the products and services with that of another by a competitor is known as Comparative Advertising. The comparison may be explicitly or implicitly made, it may be visual or verbal form, and it may depict the superior or similar nature of a part of the product. Therefore, where an advertisement of Thums up depicting that that the drink called "pappi" synonymous to popular brand Pepsi is "bachon waali drink" portraying that people who drink Pepsi are not grown up is a kind of comparative advertising. There are situations where competitors makes superior claims with regard to the representation of their products i.e. puffing but sometimes in doing so, such may entrench the boundaries of the reputation of the competitor and may denigrate or disparage the rival product. In case of comparative advertising, the advertisers uses the trademark to make comparison between his goods and those of his competitors and in the process disparages them, then such an act on the part of the advertisers not only invoke issues of disparagement but also issues relating to trademark infringement. Hence, such a comparison not only invokes the issues of denigrating the competitors but also issues of trademark infringement.

4.1. Impact of Comparative Advertising

The technique of comparative advertising is now different from the traditional form of advertising. The product or services sought to be advertised now not only remains within the boundaries of making superlative claims about owns product or making claims that their product is best but it has outreached other competitor's arena which has enhanced cut-throat competition. The impact of comparative advertising can be viewed from the point of view of different parties involved and influenced by such advertising. Therefore, it is important to note

how they are affected, influenced or advantaged and has been carefully observed in the following points.

4.1.1. Impact on Competitor's Business

Comparative Advertising is often considered as an aggressive marketing practice because it may look down upon the competing product as well as it has potentials of distorting the position of the product being compared. It may also be important to consider that there is some element of biasness or partiality associated with the product. All the pros and cons of the product may not be shown in the complete light and rather the focus is on such features that exemplifies the favourable features.

The importance of brand to a business cannot be undermined and serious hard labour and money is undergone in making a brand. A brand can be said to be the face of the product. It connects the manufacturers with the consumers and guarantees the quality. But in comparative advertisements generally, a new entrant advertises by riding over the well established brands. The competing brands with such advertisements are worried for the good will and reputation that they have earned in the market place because such direct comparison may also lead to shifting of consumers for the other brand. There may be situations that the brand which is comparing its goods and services may succeed in establishing its superiority, and there may loss to the competing brand and it may also dilute its position in a particular market.

However, it cannot be ignored that if such comparing is truthful and there is comparison of the features of the features of the two products, then it can further public choice and also encourage healthy competition. It has been made clear by the courts that mere puffery is not itself a product disparagement but defaming or showing that the other product is inferior in quality is not permissible.

4.1.2. Impact on Advertiser's Business

Comparative advertising is especially useful for new brands because it enables them to place themselves directly against more established brands and advertise their unique benefits. Direct comparisons can assist in positioning a new brand within a group of products that consumers might be considering. For brands with a limited market share, comparative advertising is often used. They equate themselves to a well-known market leader in the hopes of forming a bond and gaining access to the leader's market.

Owners of new brands in the industry find it incredibly difficult to crack through the market wall that is erected around leading brands, whether due to brand loyalty, laws protecting well-known trade marks, or an inability to produce enough compelling promotional campaigns. Comparative advertisement is a very successful marketing technique. These initiatives help to attract customers' attention to similar-quality rival goods marketed under different brands. Comparative advertising is a tactic used by new marketers to encourage less-known brands to enter the market by covering goods and services that are similar in quality to those covered by leading brands.

In case of *Pepsico Inc. and Another v. Hindustan Coca Cola and others*, Hon'ble Justice C.K. Mahajan has remarked that "Effective advertising delivers a message that it remembered. It can change the way of world views a product or service and can generate sales. If the market for a service or product is well-defined, comparative advertising can held the product or service distinguished from the competition. Nothing seems to be more efficiently than comparative advertising."

The comparative advertisement may help a challenger who may have an unknown position in the marketplace to grab 'grab a niche' close to a well-known and respected brands and it also promotes competition and manufacturing opportunity. But on the other side, it may give way

to open media warfare, might decrease the credibility of the sponsor brand, consumers may view the advertisements as bad manners, and there may be heightened negative attitude of the consumers than the traditional advertisements.

4.1.3. Impact on Consumers

Comparative advertising is a type of promotional mode in which the marketed products are sought to be compared with those of competitor's and in this it tries to associate with such a good in terms of some feature that is similar between the two and usually at a price lower than the competing product. This technique is mainly to take advantage over the reputation of the already marketing goods well established in the market, and the customers are well off with such brands. Another type of comparative advertising can where the focus is based on the difference of the two existing brands in the market and the brand making such comparisons portrays that the product is superior in nature than the one compared. Comparative advertising may play a role in influencing the perception of the consumer regarding a brand. However, on a positive note it can be seen as a medium where it literates customers on the existing and new brands and also it may also improve public choice of selection where the products or services advertises on its merits and not only take advantage of the reputation of the existing brands. Advertising is helpful in molding consumer decision making process by creating brand awareness. But, it is also possible that such advertising would give bad impression in the eyes of the consumers against such advertisers.

4.2. Comparative Advertisement in USA, UK, European Union and India

The term 'Comparative Advertising' does not find mention in any of the Indian Statutory Regime and there is no specific dedicated issue with regard to this matter. However, such an advertisement can be said to form a sub-set of trade mark to be dealt under the Trade Marks Act, 1999 as the comparisons of goods and services in comparative advertising is by targeting other competitors through the trade mark on the product sought to be compared. The consumers are also affected by such advertisements so, the Consumer Protection Act, 1986 shall also govern the scenario. Since the competitor is directly comparing his goods in the market, the Competition Act, 2002 shall also come into picture to regulate the market and competition. In India, there is also a Self-Regulatory regime in place that consists of members from advertising fraternity and also members from civil society who shall regulate the advertising content. The MRTP Act providing primarily for prohibition of unfair trade practice and misleading advertising being one of the unfair trade practices has been consequently repealed. The Competition Appellate Tribunal and the National Commission has now been vested with the power to deal with cases relating to restrictive trade practices and unfair trade practice after the amendment to the Competition Act subsequently repealing the MRTP Act. Moreover, the Competition Act also provides for remedy in case of abuse of dominant position to maintain healthy competition. The Consumer Protection Act furthers consumer's interest and the Consumer Redressal forums established under the Act have also been empowered to issue corrective advertisement. The ASCI that consists of body of professional belonging to the advertising fraternity has been empowered to regulate the content of advertising providing a self-regulation code in India. There are also various judgments distinguishing on the elements of puffing and disparagement to decide the cases and with changing attitudes. Therefore, in India the comparative advertising is regulated by web of laws and therefore there is need for harmonization.

The Statutory framework in the different countries is governed by the Trade Mark laws and comparative advertising is also made part of the provisions. Like in United States, the Lanham (Trade Marks) Act, 1946 protects the right holders as well the consumers from misleading use of trademarks and also protection against unfair competition. In United Kingdom, the Trade

Marks Act, 1994 makes provision for registration of trademarks and protection of registered trademarks. In India, the Trade Marks Act, 1999 makes provision for registration of trademarks and provides remedy in case infringement of registered trademark as well as common law remedy in the form of passing off.

In India, there is no specific statutory framework that deals with comparative advertising. Commercial speech has been guaranteed protection under Article 19(1) (a) of the Constitution by the Supreme Court Judgment and advertising for commercial gain is also entitled to the freedom guaranteed under the Constitution. The phenomena of comparative advertising finds mention primarily in the Monopolies and Restrictive Trade Practices Act, 1969 as 'Unfair Trade Practice' wherein a false or misleading statement is made in relation to advertisement. However, the MRTP Act was later found as not in consonance with the international economic development that relates to competition law. Therefore, the MRTP Act got repealed by the Competition Act, 2002.

The Competition Act was enacted mainly to ensure competition in market and to keep a check against the harmful practices against competition. The Competition provides that where the cases relates to false and misleading representations and such is pending before the MRTP Commission shall stand transferred to the Competition Appellate Tribunal. The Competition also provides protection against abuse of dominant position by an enterprise therefore it fosters healthy competition and also controlling the monopolist attitude by restraining abuse of dominant position. It is worthwhile to notice that the Competition Act at present does not contain any provision with regard to unfair trade practice.

Another statute dealing with unfair trade practice is the Consumer Protection Act, 1986 and contains provision relating to unfair trade practice as parimateria to the MRTP Act.

Therefore, the Consumer Protection Act can also provide remedy in case of unfair trade practice empowering the Consumer Redressal Forums, but as observed by the High Court in case of *Colgate Palmolive (India) Ltd. v. Anchor Health and Beauty Care Private Ltd*, that the Consumer Protection Act is intended only for the benefit of the consumers and not for the manufacturers, marketers or service providers.

A self-regulatory mechanism i.e. Advertising Standard Council of India is also put in place to regulate advertising by the advertising fraternity and also the members of civil society for deciding on disputes relating to advertising. This kind of self-regulation within the market has been encouraged in UK also i.e. the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing Communications (CAP Code), 2010 and the UK Code of Broadcast Advertising (BCAP Code), 2010 providing rules for misleading advertisements on separate basis and common adjudicating authority i.e. the Advertising Standards Authority(ASA).

5. CONCLUSION AND SUGGESTION

Competition has devised new methods of marketing their product such that buyers are influenced to purchase their products as a result of the rapid increase in the means of production of goods marked by economic growth and rapid increase in science and technology. Advertising has become increasingly popular as a medium for promotion and marketing. Advertising as a means of communication has tremendous potential which has been realized by the manufacturers and producers of goods and services. The Business Organizations have been vigorously using the tool of advertising for marketing and promotion of their product. The 21st century has witnessed innovative advertising campaigns and methods for product promotion because of fierce competition in the market. More and more competitors are engaged in manufacturing similar goods and services therefore different methods of representations are used to create product image in the mind of the prospective consumers.

Generally, advertising tries method of persuasion to influence the consumers. One of the means of advertising which is recently gaining momentum is the method of 'Comparative Advertising'. Comparative advertising is an aggressive marketing tool whereby a comparison is made with a particular attribute or feature of the goods and services with that of the other competitor. The comparison involves inherent competition and it gets filthy when the product of the competing product is denigrated or defamed.

There have been issues as to the legality of comparative advertising and conflicting views have emerged. On one side, some advocate this technique on the basis that it enables consumers to make better purchasing decisions and it maintains competition in market and on other side, it has been discredited as it may affect the good will and reputation of the competing product. From the analysis of the impact of comparative it can be make out that both the opinions are correct in their own ways. These were general issues that pertain to comparative advertising. Because of the advantages and disadvantages involved in comparative advertising, there have been issues of legality of comparative advertising and conflicting legal position was there around the world. Some countries have accepted this concept with open arms and some did not. However, a trend of gradual acceptance towards comparative advertising can be observed and in near future, the concept may attain worldwide acceptance.

The Trade mark issues relating to comparative advertising have arisen because when a comparison is made there is comparison of the goods and services and trademarks are the symbols that represents such products. In the economic sense, the trade marks can be said as brands that connects the manufacturer and the consumers otherwise the product identification would have been impossible.

The law on comparative advertising has been basically interpreted by the High Courts in India. The High Courts have interpreted the law and so far the decision from the Apex Court has not settled the law and till then the law is susceptible to different interpretations and is still in unsettle position. In India, the Courts attitude towards puffing is changing however, consistent in approach when it comes to disparagement. At the initial stage, the judicial pronouncements have declared that a tradesman is entitled to declare his goods as the best or better than his competitor even where such a declaration is untrue based on English cases. Now a shift in approach can be witnessed from the case of Colgate Palmolive (India) Ltd. v. Anchor Health and Beauty Care Private Ltd.³³⁰ where the focus from competitor's interest is shifted towards consumers interest and also advocated consumer education. In comparison with the UK Courts, the Courts in India have a strict approach towards puffing.

The UK Courts liberal approach towards comparative advertising is evident in case of *British Airways Plc v. Ryanair Limited* and also the case of *O2 Holdings Ltd. and Others v. Hutchinson 3G Ltd* In United States, the Courts under Section 43(a) of the Lanham Act was of the view that the non-actionable statement of general opinion was held to be puffery and the test of reasonable person reliance on exaggerated statement was considered to determine the question of puffery as was observed in case of *Pizza Hut, Inc. v. Papa John's International, Inc.*

5.1. Suggestions

From the above analysis it is clear that the law of comparative advertising is an ambiguous phenomenon that touches on many aspects of the laws. There has been need for regulation of this phenomenon because the advertisers have started crossing the limits of tolerance. The need for a complete framework has been felt in the recent times taking into account the unfair methods used. There is plethora of laws in India that takes into account comparative advertising; however, the concept still seems to be unclear in respect of the laws.

The following suggestions have been put forward by the researcher to strengthen the law on comparative advertising in India:

- There is need of a statutory definition of ‘Comparative Advertising’ in India. From the statutory definition the ambit of comparative advertising shall be clarified and the ambiguity can be reduced. Regard must be having to the definition of comparative advertising in other jurisdictions as have been discussed in Chapter IV. In that chapter, the researcher has attempted to evolve the elements of comparative advertising as deduced from the definitions of the laws from the United States, European Union and the United Kingdom.
- As seen from the EU Directive 2006/114/EC concerning the Misleading and Comparative Advertising Directive, Article 4 lays down specific conditions which are required to be complied with by the Member States to permit comparative advertising. In United Kingdom, the Business Protection from Misleading Marketing Regulations, 2008 has implemented the Directive, as a part of its mandate to implement the EU Directive. Similarly in India, also such conditions must be laid down with regard to comparative advertising so that the law on comparative advertising is clear and these may serve as guiding principles towards lawful comparative advertising leading to lessening of legal issues.
- The Trade Marks Act, 1999 makes provision under Section 29(8) and Section 30(1) for protection of trade mark in advertising. But there is use of some ambiguous terms like ‘honest practices in industrial and commercial matters’, or ‘against reputation of trade marks’. The Paris Convention for the Protection of Industrial Property, 1883 Article 10bis, uses the expression ‘honest practices in industrial and commercial matters’. India being a party to the Paris Convention since 1998 must adopt this article to define the ambiguous terminology used. Reputation is an intangible element; there must be some set criterion to determine the conditions when a comparative advertising goes against the reputation of Trade marks. Much of the law has been left ambiguous and vague susceptible to different interpretations and leading to uncertainty.
- The Competition Act, 2002 does not make any provision for ‘Unfair Trade Practice’ and for addressing the claims relating misleading and false representations the Monopolies and Restrictive Trade Practices Act provided for the definition of ‘Unfair Trade Practice’ but the Act repealed due to prevailing conditions of the world economic order. The definition is now a part of the Consumer Protection Act but the manufacturer is not a consumer within the definition of the Act and therefore he cannot file complaint. So it can be seen that ‘Unfair Trade Practice’ has not been dealt with properly within the Indian Legislation and even it is part of the law still its application has flaws. Moreover, harmonization of the law relating to comparative advertising is required for effective protection.
- The Judge made law has evolved in recent years on the law of comparative advertising. In order to settle the law on comparative advertising, the High Courts must take a stand that balances consumer interest as well as maintains competition in market. In India, comparative advertising is allowed, however with limitations. The matter remains unsettled till the verdict of the Apex Court comes in this regard.
- It can be said that comparative advertising is the tug-of-war between two competing rivals so the matters should be resolved within the commercial domain. However, the impact on consumers of an advertisement should also be taken into consideration while determining the dispute because the consumer is also the interest holders apart from the two manufacturers. The Advertising Standard Council of India (ASCI) has been working tremendously well towards regulation of advertisements but in order to strengthen its position there must be more teeth added towards its enforcement mechanism. It must be made mandatory for any company before advertising to register itself with the ASCI for the purposes of advertising in any medium whatsoever. However, it is true that the decisions of the Consumer Complaint Council (CCC) is abided most of the time but in case of non-

abidance there must be some form of imposition of fine till the order is not complied and a maximum limit of the fine. Then some provision for punitive action must be made. The members of the CCC must consist of some retired judges also who can also guide the matter in judicial manner and impose some punitive form of punishment or exemplary damages in case of irreparable damage to the plaintiff's reputation.

- The business organization willing to advertise must keep in mind that the advertisement does not denigrate the rival product. Precaution is always better than cure and in spite of getting in legal troubles there should be pre-screening of the advertisements. The ASCI Code and all the laws relating to comparative advertising must be kept in mind by the marketing department of the organization before the actual broadcasting. The advertising claims must be based on true facts or some survey or clinical test so as to verify the representations made. The disclaimers or any information written at the bottom of the advertisement must be visible enough to avoid any sought of confusions. The tool of comparative advertising can be used effectively where correct product information is given and without damaging the goodwill of the competing product. In this way healthy competition can prevail in market and this can directly help the consumer in making fully informed purchasing decisions.

Therefore, from the above discussion, a humble attempt has been made by the researcher to analyze the various aspects of comparative advertising in general and also the legislative ambit. The suggestions put forward by the research has been culled out taking into the account the Indian Legal System and also guidance from laws of other jurisdictions have been taken to provide a wholesome law in India regarding comparative advertising. Even if the need of a specific statutory framework relating to comparative is not felt but specific detailing of the present legal framework is what is desired. Moreover, the strengthening of the self-regulatory mechanism might additionally supplement the law.

REFERENCES

- [1] Rodney D. Ryder, Brands, Trademarks and Advertising, LexisNexis Butterworths India, New Delhi, 2003.
- [2] Subhash Malviya, Advertising and Promotion, Adhyayan Publishers and Distributors, New Delhi, 2007
- [3] Parth Gokhale and Shriyani Datta, "Comparative Advertising in India: Evolving a Regulatory Framework", The NUJS Law Review, Vol. 4, Issue 1, 2011.
- [4] Paul Spink and Ross Petty, "Comparative Advertising in the European Union", International and Comparative Law Quarterly, Vol. 47, 1998.
- [5] Stewart E. Sterk, "The Law of Comparative Advertising: How much worse is "Better" than "Great", Trade Mark Report, Vol. 67, 1977.
- [6] G.V. Narsimha Rao, "Comparative Advertising- Boon or Bane to Consumer Interest?", Nalsar Law Review, Vol. 7, No. 1, 2013.
- [7] Uphar Shukla, "Comparative Advertising and Product Disparagement vis-à-vis Trademark Law", Journal of Intellectual Property Rights, Vol. 11, Nov. 2006.
- [8] Vandana Pai and Jyotsna Balakrishnan, "When Comparisons are Odious: Comparative Advertising and Disparagement", Student Advocate, Manupatra, Vol. 13, 2001.

Legal Implications of Comparative Advertisement in India

- [9] Barigozzi, Francesca and Peitz, Martin, 'Comparative Advertising and Competition Policy', Jay Pil Choic, Recent Developments in Antitrust: Theory and Evidence, CESifo Seminar Series, Massachusetts Institute of Technology Press Books, United States, 2007.
- [10] Belch, George E. and Belch, Michael A., Advertising and Promotion: An Integrated Marketing Communications Perspective, Tata McGraw-Hill Edition, New York, 2008.
- [11] Pepsico Inc. and Another v. Hindustan Coca Cola and others, (2001) AIPC 240 (Del)
- [12] Colgate Palmolive (India) Ltd. v. Anchor Health and Beauty Care Private Ltd, 2014 (57) PTC 47 (Del)
- [13] British Airways Plc v. Ryanair Limited, (2001) F.S.R. 32
- [14] O2 Holdings Ltd. and Others v. Hutchinson 3G Ltd, Case-533/06, Supreme Court of India
- [15] Pizza Hut, Inc. v. Papa John's International, Inc., 227 F.3d 489