

A STUDY ON COMPARATIVE ADVERTISING IN INDIA

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Abstract

A comparative advertisement is one in which a certain product directly mentions a rival by name with the intention of demonstrating how inferior the rival is to the product identifying it. It is a marketing tactic in which a corporation presents its goods or services as superior to those of a rival. A side-by-side comparison of the features of a company's products and those of a rival company's products may be printed as part of a comparative advertising campaign. It might also include a cost-versus-value comparison. A promotional method known as comparative advertising involves the firm's advertising message making explicit or implicit comparisons to rival brands.

Comparative advertising has matured and is projected to become more and more significant as a marketing tactic in India for both consumer durable and non-durable goods. The current research is a modest attempt to investigate importance, advantage, and disadvantage before assessing the effectiveness of communication based on an empirical strategy.

Comparative advertising is when one party promotes its products or services by making comparisons to those of another party. This other party is frequently his rival or the company that dominates the market for that commodity or service. In order to increase the advertiser's sales, a comparison is made between the two products, either by implying that the advertiser's product is of equal or superior quality to the compared one, or by disparaging the compared product's quality.

This article attempts to address the idea of comparative advertising within the context of intellectual property law by examining the various factors involved, statutory enactments, positions taken by courts of law in India and abroad, honest and unfair practices associated with CA, and finally, a comparative analysis of laws of other countries, thereby highlighting the ambiguity and lack of comprehensive laws in India.

Keywords: Comparative advertising, Products, Goods and Services, Sales, Marketing

Introduction

Comparative statements can be made in many ways. A competitor may be mentioned expressly or impliedly. They could place more emphasis on the features that the items have in common (positive comparisons) or that they don't (negative comparisons). They could claim that the promoted item is "better than" or "as good as" the rival's (superior claims) (equivalence or parity claims). The purpose of this idea is to enable an objective-i.e., non-misleading-comparison of the characteristics of one trader's items with those of another; such a comparison will unavoidably require the usage of the trade names connected to the compared goods. Such use can be considered trademark infringement in the absence of any regulations governing it. Kaushik, R. (2012).

The Trade Marks Act makes an effort to strike a compromise between the rights of registered trade mark owners and the strong consumer interest in educational advertising. According to Section 29(8) of the Trade Marks Act, use of a registered trademark in advertising constitutes infringement if the use of the trademark is unfairly advantageous, goes against ethical business standards, lessens the trademark's distinctiveness, or harms its reputation. Gokhale, P., & Datta, S. (2011).

Competitive advertising encourages market openness, lowers prices, and improves products by fostering competition. Its objective and honest informational goals are to educate the consumer. In order to protect the interests of these rivals, comparative advertising must not be used in a way that could mislead, confuse, or discredit a rival. Lenin, B. K., & Babu, A. (2017).

What exactly "honest practices" are has neither a definition nor an explanation. What defines honest business behavior is a broad and well-defined shared core notion that can be applied by the courts without much difficulty or undue risk of drastically divergent interpretations. Gandhi, M. B. (2017).

The definition of "unfair trade practices" contains additional restrictions that also apply to comparative advertising. A chapter on unfair business practices was added to the MRTP Act in 1984. A number of behaviors are listed as "unfair trade practices" in Section 36A of the MRTP Act, including any unfair method or unfair or deceptive activity that presents false or misleading facts denigrating the goods, services, or trade of another person. Jain, S. (2015).

The goal of this section is to improve relationships between service providers and consumers by promoting honesty and truthfulness. If a dispute arises over whether a particular act qualifies as an

unfair trade practice or not, the key to finding a resolution would be to determine whether it contains any misleading or false statements and, if so, what impact they have on the average person. Singh, V. (2016).

Comparative Advertising Concept

Comparative advertising in the Indian market was despised a few decades ago by advertising firms. The need to extol and contrast the benefits of one's products with those of rivals, however, was fueled by growing rivalry when the Indian market opened up to foreign goods in the 1990s. As a logical consequence, brand owners started using hitherto untried strategies to grab consumers' attention, which altered the dynamics of advertising in the nation. Aggarwal, R. K., & Kaur, R. (2013).

If some fundamental requirements are met, comparative advertising is typically lawful and acceptable. For establishing comparison claims, the Advertising Standard Council of India (ASCI) provides a few general guidelines in its Code for Self-Regulation of Advertising Content in India. For instance, there should be little to no issue as long as advertisements are clearly "in the interests of vigorous competition and public enlightenment" and the aspects being compared are clear. Likewise, similar products that satisfy the same demands and are meant for the same purpose should typically be advertised similarly rather than through comparative means. A factual, accurate, and verifiable comparison between competing items is also required. The advertisement must not unduly disparage, criticize, or degrade other items. Most significantly, the comparison between the products must not mislead customers regarding either the marketed product or that with which it is compared. Patil, A. A. (2017).

Comparative Advertising in India

With the liberalization and globalization of the economy in 1991, competitive advertising became common in India. Businesses in India are currently vigorously and aggressively promoting their goods through comparative advertising. The most popular kind of comparison advertising in India is puffery rather than denigration, when businesses employ phrases like "others are not" in their promotion. (Pathak, 2007). To put it another way, corporations in India frequently engage in comparison advertising by using inaccurate or deceptive information that betrays the confidence

of stakeholders or customers. Comparative advertising is reportedly more common in the FMCG sector of the nation than in other sectors, according to trends and court judgments. Agarwal, S., & Shaikh, I. (2016).

India, unlike the UK and the USA, does not have a separate legislation that addresses comparable advertisements, but the country's courts have pointed to several statutes in the current system that can be used. For instance, the Delhi High Court holds that, to a certain extent, the Trademarks Act of 1999 and the Monopolies and Restrictive Trade Practices Act of 1984 apply to the issue of comparative advertising (Gangwar, 2015).

Objective of the study

- To ascertain the effects of various forms of advertising on consumer behavior and brand.
- To learn people's attitudes, awareness of it, and perceptions of comparable advertising.
- To identify the most effective media for spreading knowledge about comparative advertising.

Methodology

By the survey approach, data on brand preference, brand awareness, recall extent, appropriate media for raising awareness of comparative advertising, and viewer expectations are gathered in order to assess the efficacy of comparative advertising. A questionnaire was given out to gather primary data. To evaluate the efficacy of comparison advertising, portfolio tests were also used. A randomly chosen sample of fifty people was used to collect the study's data.

Analysis and Interpretation

In order to compare businessmen, government workers, students, working women, and homemakers, 30 valid surveys were used in the analysis. The respondents were questioned about their opinions about comparative advertising and were asked to choose five products they would purchase based on the advertising portfolio and the key considerations for choosing a certain brand to support the products of which are shown in Table I:

Table I: People Perception about Comparative Advertising

| | | | |
|------------|-----------|--|--|
| Perception | Weightage | | |
|------------|-----------|--|--|

| | 5 | 4 | 3 | 2 | 1 | Total Weightage | Positional Rank |
|--|----|----|----|---|----|-----------------|-----------------|
| Ad copy is informative for advertising | 10 | 10 | 3 | 4 | 6 | 112 | 2 |
| Ad copy is attractive in Market | 9 | 5 | 4 | 7 | 7 | 98 | 7 |
| Ad copy is convincing for people | 11 | 6 | 1 | 8 | 6 | 104 | 4 |
| Ad copy facilities better evaluation in the market | 18 | 4 | -- | 8 | -- | 122 | 2 |
| Product is cheaper and better | 8 | 5 | 4 | 7 | 8 | 88 | 9 |
| Product is superior to others | 12 | 7 | 3 | 4 | 6 | 106 | 4 |
| Product is worth buying to consumer behaviour | 12 | 7 | 3 | 4 | 5 | 108 | 3 |
| Ad Copy is emotional appealing | 6 | 7 | 4 | 6 | 8 | 90 | 8 |

A review of the data shows that comparative advertising text aids in better evaluation and that the advertised brand is superior to the brand of the competition. By examining the efficiency of communication, it is shown that customers regard electronic media to be the most well-liked. Also, it is discovered that the majority of respondents support comparison advertising. Table-II.

Table-II: Effectiveness of Comparative Vs. non- Comparative Ads. In India
(t-values - 5% significant levels)

| Sl. No | Advertising attribute | Comparative advertising | Non comparative advertising | t-values | Significance |
|--------|-----------------------|-------------------------|-----------------------------|----------|--------------|
| 1 | Acceptable | 3.41 | 3.48 | 0.75 | 0.05 |
| 2 | Famous | 3.8 | 5.7 | 1.47 | 0.05 |
| 3 | Compelling | 3.3 | 6.8 | 2.6 | 0.05 |

| | | | | | |
|----|----------------------|-------------|------------|------------|-----------|
| 4 | Tangible | 3.6 | 5.0 | 2.7 | 0.05 |
| 5 | Comprehensible | 3.2 | 3.47 | 0.55 | 0.05 |
| 6 | Unbiased | 3.44 | 6.9 | 1.86 | 0.05 |
| 7 | Applicable | 3.20 | 7.2 | 2.17 | NS |
| 8 | Sentimental | 3.10 | 5.5 | 3.12 | 0.05 |
| 9 | Quality Product | 3.8 | 4.8 | 1.72 | NS |
| 10 | Dangerous | 3.31 | 6.0 | 1.42 | 0.05 |
| 11 | Better Facilities | 2.56 | 3.8 | 0.55 | 0.05 |
| 12 | Inoffensive | 2.75 | 6.4 | 2.44 | 0.05 |
| | Average Score | 3.46 | 5.8 | 1.6 | NS |

NS= Not Significant

Conclusion

Finally, it made a point of pointing out that comparative advertising is permitted by law as long as the use of a rival's trademark is "honest." According to the Court, determining whether a use qualifies as honest hinges on whether members of a reasonable audience find it to be so. In this scenario, failing to mention a competitor's advantages isn't always dishonest, and by extension, stressing the benefits of the competitor's goods in an advertisement by the marketer isn't necessarily dishonest either.

In the case of India, corporations there typically use comparison advertising by providing inaccurate or misleading information that betrays the trust of stakeholders or customers. In addition, businesses must stop looking down on competing goods, services, or brands and instead utilize comparative advertising to encourage healthy, quality-based competition. Comparative advertising is supposed to make it easier to evaluate companies, boost consumer recall, and most importantly, make arguments in favor of a brand more understandable. The current study demonstrates that, providing the amount of information is kept within a certain range, non-comparative advertising is judged to be more entertaining, more effective, and simpler to grasp. The study has the following marketing ramifications.

Since comparative advertising should make accurate and convincing comparisons between the competing brands, it should be given through TV as it has got substantial demonstration effect which is absent in any other medium. As comparative advertising is more suitable for closely competing brands, only sponsoring companies having good quality product should follow comparative advertising.

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