COMPARITIVE ADVERTISING AND INFRINGEMENT OF TRADEMARK

ABSTRACT

This paper delves into the issue of comparative advertising – a new and oftentimes unscrupulous practice – and how, on occasion, such an exercise can lead to the infringement of trademark of a competitor’s product – debase it, without any proper knowledge of the merits or demerits of the product itself. In previous decades, advertising was understood as a by-product of promoting one’s own product. A manufacturer or artisan would create a certain product, and to sell it, they would enunciate the merits of that article. This is fair and just, because all trade depends on presentation first, merits second. However, they would not undermine the value or effectiveness of their competitors’ products without having any knowledge of them – this has increased in recent years, and is an unethical practice to say the least, moral objections aside. With increase in trade, and growth of technology, traders and merchants have become aware of their rights, and hence the point of trademarks is born. They associate a certain symbol or image with their product, which is easily recognizable by the consumers. This is their identity, which is made the object of attack by rival competitors, who seek to glorify their own product by portraying the former as something inferior to the latter. Their aim may be just, to sell a product and earn profit, but the way in which they do it can either keep them on the right side of the law, or turn them against it, as the researchers will try and explain in this paper. The key differences between comparative advertising and product disparagement will also be highlighted, the latter being an express condemnation of the competitor’s product, which attracts the remedy and punishment of the law. Furthermore, to explain the varying stands on this issue, reliance will be put on judicial precedents and the ratio given by the respective courts in each of the mentioned cases. Also, the legal provisions related to trademarks and advertising will be looked at in this research paper, vis-à-vis the Indian Constitution, the Trademark Act, 1999, the Monopolistic and Restrictive Trade Practices (MRTP) Act etc. Thereafter, the approach of other nations – the USA, United Kingdom and China – towards this question of law will be looked at, and how they deal with cases of comparative advertising which may veer into the gray territory of product disparagement. The paper will then be concluded after a critical analysis of how trademark infringement via comparative advertising, if done belligerently, leads to the destruction of goodwill of another competitor’s goods or products, and how thin the legal line between lawful and ethical and unlawful and unscrupulous product advertising really is.

Keywords: advertising, disparagement, trademark, infringement, goodwill.
INTRODUCTION

Comparative advertising is an incipient concept in the field of intellectual property rights and law itself. This can be credited to the competitive nature of merchants and traders in the market economy, and it includes one competitor mentioning the name of a rival product specifically in its own advertisement, so as to boost the image or “apparent effectiveness” of its own product, by portraying the other one as inferior.

Market domination by different trade competitors, companies, merchants etc. is a recent trend, and from that, the idea of comparative advertising has come into existence. Although previously an advertisement of a product just displayed the merits and advantages arising from the use of a particular product, now the situation is different, as product advertisements indirectly one-up the other products by claiming their own product to be the best one.

A prime example is the advertisement of detergent washing powders, wherein it is claimed that the product in question is the best detergent when compared to other like products. This strategy serves the purpose of drawing consumer focus on that particular product, and also appealing to the psyche of the consumer. Furthermore, once a consumer is convinced of the appeal of that particular product, he/she is likely to buy that product, and recommend it to others, which ensures brand loyalty.

Advertising is almost an overwhelming, omnipresent phenomenon which has taken multifarious dimensions now. It isn’t like previous decades, where advertisements were limited to print media and auditory channels, such as the radio, and there was a certain integrity or ethic of advertising. Other products were not compared on the same platform, and even now, if one thinks about it, how can a rival competitor use the trademark or product image of another rival to glorify its own commodity? Doesn’t this amount to infringement of trademark?

This question forms the crux of this research project which is: whether in the name of comparative advertising, rival competitors are infringing each other’s trademarks?

RESEARCH METHODOLOGY

For the purposes of this project, the doctrinal method of research shall be used. Books, journals and online links shall be referred to for the making of this project. For citation, the Bluebook method of citation shall be used.

RESEARCH QUESTIONS

Following are the research questions which shall be answered in the course of this research paper:

1. How did comparative advertising emerge?

2. What the objectives behind comparative advertising? How can it lead to infringement of trademarks?

3. What are the laws in India which govern comparative advertising and trademarks?
4. What judicial precedents have been set by the judiciary on this topic? Are they adequate to cover all aspects of this topic?

**RESEARCH OBJECTIVES**

1. To get information about the concepts of comparative advertising and till what extent it is permissible.

2. To know the difference between comparative advertising and product disparagement.

3. To know about the Indian legislations and precedents on comparative advertisement.

4. To know about the Indian Scenario of comparative advertisement and how it is different from foreign countries.

**HISTORY AND EVOLUTION OF COMPARATIVE ADVERTISING**

The advent of comparative advertising can be traced back to the activity of trading itself. One merchant or trader promotes his/her commodity, and to do this, he/she has to tell the consumer about the positive features and advantages of using that particular product over any other product. So, a comparison is but a natural extension, a by-product, of the activity of conducting trade, without which, a merchant cannot sell his/her product. However, when the same merchant intentionally, and without any knowledge, debases or depreciates the rival merchant’s product, then it is an unfair, prejudicial and malicious trade practice, which ridicules the intellectual efforts of the rival competitor to make that particular product, and hence is not comparative advertising to say the least. It is more, an infringement of the rival merchant’s product’s trademark. This is where law intervenes.¹

**OBJECTIVES AND CATEGORIES OF COMPARATIVE ADVERTISING**

There is a motive behind each business activity, and comparative advertising is not immune to this. These are the following objectives behind comparative advertising:

1. Evaluate the product’s performance and reception in the market,

2. To degrade (expressly or impliedly) the rival’s product on the basis of brand value,

3. To increase consumer awareness about the particular brand or product, and

4. To convince consumers of other products to change preferences and shift to the sponsored product.²

Aside from the aforementioned objectives, there are various categories of comparative advertising which are recognized the world over, aside from some sub-categories of the same. They are mentioned below:

¹ Analysis on Comparative Advertisement Resulting in Trademark Infringement, LEGAL SERVICES INDIA (Sept. 29, 2019, 12:24PM), http://www.legalservicesindia.com/law/article/1136/7/ANALYSIS-ON-COMPARATIVE-ADVERTISEMENT-RESULTING-IN-TRADEMARK-INFRINGEMENT.

1. **Non-comparative advertisements:** As the name suggests, these advertisements refer only to the brand or product they wish to portray and promote, and not a single reference is made to competing rivals, expressly or impliedly. For instance, a Rolex watch advertisement.

2. **Indirectly comparative advertisement:** Advertisements which *on the face* refer to one single commodity, but indirectly compare its attributes to a rival’s product(s).

3. **Directly comparative advertisements:** As suggested, these kinds of advertisements compare the attributes of their own products to those of rival products. Often, this is done in a way where the other, *supposedly inferior* brand is recognizable to the consumer, thus directly affecting his/her product choice. It is a controversial way to promote one’s own product.³

**Other sub-categories include:**

- Advertising to portray the product as better than the rival product,
- Advertising to portray better value than a whole class of products. For example, Pepsodent (a toothpaste brand) proclaiming its superior tooth-whitening capacity over, say, Colgate (another toothpaste brand),
- Advertisements comparing features of one product with the other. This is seen often these days, for instance, when the features of two smart phones are compared, say an Apple versus a One Plus phone,
- Advertisements referring to the rival product visually, through a blurred trademark, often time a situation apt for creating a legal dispute.

³ *Supra* n. 3, at p. 412.
COMPARATIVE ADVERTISING V. PRODUCT DISPARAGEMENT

- By definition, the word *disparage* means to compare unequally, or discredit someone or something, which leads to a loss in reputation of the person or image of the product in the eyes of the consumer.
- Comparative advertising is different in the sense that it simply compares the features of two products with each other so as to inform the consumer before he/she makes a choice as to what product to choose. Having the knowledge to freely choose before any purchase is one of the basic rights of any consumer, and comparative advertising, so long as it is done fairly, ensures exactly this.
- However, whenever a comparison between two products is done, there is bound to be some innate disparagement of one good compared to the other. However, the law doesn’t intervene in all such matters as this is a part of commerce, a way to conduct one’s trade. Intervention by the courts of law or the authorities only takes place when there is an express condescending comparison of one product with respect to the other.
- The old view with regard to comparative advertising versus product disparagement is inflexible, in the sense that comparative advertising is seen as a transgression on the goodwill of the trademark of another manufacturer’s product.
- However, the new view allows comparative advertising to be exercised, as it is an indispensable activity without which commerce cannot thrive. It is the right of any two competing manufacturers to promote the features and attributes of their product.4
- In order to be able to differentiate between comparative advertising and product disparagement, three criteria should be considered. The first being the presence of a false or misleading statement of fact which may be made about a product. The second indicator is whether such statement has misled or deceived, or may have the power to mislead or deceive a substantial portion of possible consumers of the product so disparaged. The third and last concern to be looked at is whether such statement can influence the final purchase decision(s) of a consumer. If all three are found to be true, then an action against the transgressor will surely lie.5

LEGAL ANALYSIS

There are some legal provisions in India which pertain to cases of copyright or trademark infringement, and also by extension, to comparative advertising, when such advertising is hostile to another competitor’s bona fide business activities. They will be discussed herein.

1. **Article 19 (1) (a) of the Indian Constitution** guarantees the right to freedom of speech and expression, and this extends to artistic and intellectual expression across media as well. Therefore, the devising of a trademark is an intellectual activity, which is carried out collectively by the members of a company, and would come under the ambit

---

5 Supra n. 5.
of this aforesaid fundamental freedom too. However, it is still a matter of debate whether the Article truly extends this protection to commercial comparative advertisement or not.

For instance, in the case of *Hamdard Dawakhana (Wakf) Lal v. Union of India*[^6^], it was held by the Hon’ble Supreme Court that:

“The sale of prohibited drugs was not in the interest of public, and that the advertisement of such drugs therefore "could not be speech" within the meaning of speech and expression under Article 19(1) (a) of the constitution. The Supreme Court held that in this Case said that the advertising by itself would not come under Article 19(1) (a) of the constitution. Advertisements for non prohibited drugs would be protected as free speech but certain advertisements which are prohibited by various statutes, codes, rules and regulations in India would not be considered as protected.”

This, among other reasons, is why the freedom guaranteed under Article 19 (1) of the constitution is subject to reasonable restrictions under Article 19 (2).

However there still remain codified rules and regulations and judicial precedents which shed light on how the issue of comparative advertising and infringement of trademark should be dealt with. Whether adequately dealt with or not, remains open to interpretation.^[7^]

2. **The Advertising Standards Council of India (ASCI)** is an independent, self-regulatory body which lays down rules and regulations to be followed by advertisers. These are as follows:

1. Comparisons with other like products between manufacturers is permitted, provided that
   - There is clarity as to what attributes or features of both products are being brought into contrast,
   - There is accuracy and veracity which can aid substantiation of the comparison,
   - There is no chance of the consumer being misled as a consequence of such comparison.

2. Unfair use of the trademark(s), goodwill of another company’s product is prohibited, and is not a justification for such advertisement,

3. Plagiarism, suggestible or direct, is prohibited when it comes to creating advertisements. Originality is necessary, and the layout, audio-visual design, colour themes etc. should not match earlier advertisements of similar products.

The **Consumer Complaints Council (CCC)** is constituted by the ASCI, and it is a forum for an individual or person to raise their qualms against objectionable advertisements. The CCC is constituted of well-known persons from the advertising industry, jurists with knowledge on the subject, and other distinguished persons from civil society.

The CCC first hears the facts of the dispute, and if it comes to the conclusion that the impugned advertisement has violated the ASCI code or any other law related to trademarks, copyrights, intellectual property etc., then can deem that the advertisement be withdrawn or modified.

3. Section 36 A of the Monopolistic and Restrictive Trade Practices (MRTP) Act talks about unfair trade practices which lead to the disparagement of goods and services provided by another manufacturer.

“According to Black’s Law Dictionary, “disparage” and “disparagement” are defined as follows:

“To connect unequally; or to dishonor (something or someone) by comparison; or to unjustly discredit or detract from the reputation of (another's property, product or business); product or business. That implies 'disparagement' is a false and injurious statement that discredits or detracts from the reputation of another's property, product or business.”

Whenever comparative advertising is resorted to, there is an inevitable collateral result leading to disparagement of one product’s attributes in comparison to the other. This activity is the root of legal disputes related to infringement of trademark. Even comparative advertising by a third party can lead to disparagement of another manufacturer’s product. For example, reviews of goods in newspapers may unavoidably lead to swaying of consumer opinion in another product’s favour, which is disparaging to the product attributes of the other manufacturer.

**Trademarks and comparative advertising:**

The Trademark Act, 1999 was enacted to ensure the protection of national and international brand owners and creators, in line with the TRIPS Agreement. Its main purpose is to prevent trademark infringement in India.

For the purposes of identifying the product and/or service, the holder of the trademark has exclusive hold over the trademark. However, he/she can allow this trademark to be used in comparative advertising campaigns. An infringement of trademark occurs when the trademark in question is exploited for mala fide gain.

**Sections 29 (8) and 30 (1) of the Act talk about comparative advertisements:**

1. **Section 29 (8):** describes a situation where there is the unfair use of another person’s trademark, which leads to infringement. It falls within the ambit of unfair trade practices, and these criteria are identifiable with the infringement of a trademark, as follows:8

   - When the act is harmful to the original trademark’s reputation,
   - When the act is detrimental to the uniqueness of the trademark, and
   - When the act leads to the gaining of an unfair advantage, contrary and unacceptable to fair trade.

2. **Section 30 (1):** mentions the exception when the use of a trademark is done within the limits of fair and honest trade practice. There are 3 limitations, within which a trademark can be used for comparative advertising, which are:

   - Bona fide use,
   - In accordance with fair and honest trade practice, and

---

JUDICIAL ANALYSIS

The judiciary has set certain precedents when it comes to the issue of comparative advertising and infringement of trademark. Some of these will be discussed below.

In the case of *Reckitt and Colman of India v. Kiwi T. T. K. Ltd.*, the plaintiff was Reckitt and Colman of India Ltd and defendant was Kiwi T. T. K. Ltd., the advertisement dispute was between two liquid shoe polish companies. The defendant, while promoting its own product, also compared the product of the plaintiff.

The advertisement that the product portrayed was better than the one in comparison. The bottle named "Brand X" used to write "Others" was of the same shape as that of the registered designed bottle of Cherry Blossom – coupled with a red figure on top of the bottle. This advertisement was used vehemently both in electronic media as well as on posters at every shop that sold this product. So, a plea for injunction was filed by the plaintiff for stopping this advertisement by the defendant company, which was adversely affecting their own product’s image.

The court gave a judgment that the defendant was disparaging the goods of the plaintiff and was told to restrain themselves from using the competitor's product in a disparaging manner. The court also laid down that the advertiser can encourage the image of his goods and make statements that his goods are of superior quality, but this should not disparage the image of the competitor’s product.

In the case of *Reckitt and Colman v. M. P. Ramachandran* the plaintiff was engaged in the manufacturing of blue cloth whitener (Ujala) under the name of 'Robin Blue' for which they had obtained registration. The defendants were in the same business, and issued an ad contrasting their products to the other stating that not only was their product better, but also more effective. In this depiction they compared their product to a bottle having the same shape and pricing as that of the plaintiff’s product.

The Calcutta High Court laid down five principles in aiding the grant of injunction in such matters, stating that:

1. *A tradesman can declare his goods to be the best in the world, even though the declaration may be untrue.*

2. *He can also proclaim that his goods are better than his competitor's, even though the declaration may be untrue.*

---

9 1996 PTC (16) 393.  
10 1999 PTC (19) 741.
3. 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.

4. He, however cannot, while saying his goods are better than his competitors, disparage his rival’s goods. If he says such, he slanders the goods of his competitor. In other words we can say that he thus defames his competitors and his goods, which is not permissible.

5. 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.”

In the case of Pepsi Co. Inc. v. Hindustan Coca Cola Ltd11 it was held by the court that when it comes to deciding questions of disparagement, the following criteria must be kept in mind:

1. Intent behind the advertisement/commercial,

2. Manner of portrayal of the commercial,

3. Storyline of and message behind the commercial.

The court ruled that if the manner in showing the commercial only showed that the product is better without derogating somebody else’s product, then no actionable claim lies. But if the manner of the commercial is ridicules or condemns the product of another manufacturer then it amounts to disparagement.

In Colgate Palmolive India Ltd v. Hindustan Unilever Ltd, it was a case of disparagement of one product by another advertisement portraying it in such a fashion.

In the advertisement of the New Pepsodent, it was disclosed that the product is 102% better in terms of anti-bacterial tooth cleaning as compared to the leading toothpaste available in the market. In the TV ad, samples of saliva were taken from two boys; one who had brushed with the New Pepsodent toothpaste and the other who had brushed with the other toothpaste. The experiment was shown as containing maximum amount of germs in the saliva of the second boy. And when the boys were asked as to with what toothpaste did they brush their teeth, one said Pepsodent while the other’s response was muted. But his lip movement made it clear that the boy was referring to Colgate. As Colgate has been synonymously been used as a name for toothpaste, it was evident that the leading brand referred to Colgate. This ultimately led to the disparagement of the goods of Colgate.

11 2001 (21) PTC 722.
In the case of *Dabur India Ltd v. Colgate Palmolive India Ltd*\(^2\), the advertisement showed a film actor scrubbing the plaintiff’s dental powder on the surface of a customer’s spectacles, leaving marks and showing it to be as rough as sandpaper. The ad went on to show how the defendant's product was sixteen times less rough than the plaintiff’s product and thereby less damaging to a person’s teeth. Using the principles laid down through judicial precedents in the pre-Trademarks Act era, the court stated that this was a clear case of disparagement, which could not be allowed to continue.

In the case of *Dabur India Ltd v. Wipro Ltd. Bangalore*\(^3\), the court added a new criterion to the existing tests to aid in determining whether disparagement has taken place or not. In the case of comparative advertising, the court held that the degree of disparagement should be equal, or almost equal, to defamation of the rival manufacturer’s product. Only upon the occurrence of such an incident would the court intervene.

## COMPARATIVE ANALYSIS OF RELATED FOREIGN LEGISLATIONS

### United States jurisdiction:

In the United States of America, comparative advertising is protected under the ambit of the laws guaranteeing freedom of speech and expression. The Federal Trade Commission Policy Statement of 1960 states that comparative advertising is a very normal and essential trade activity which promotes stimulates market growth. However, the Policy Statement fails to clarify what steps should be taken when bad examples are set due to this practice.

In the case of *Tommy Hilfiger Licencing v. Nature Labs LLC*, the defendant was a perfume shopkeeper, and used to sell a perfume called *Timmy Holedigger*. The defendant compared the perfume with attributes of Tommy Hilfiger’s product, and hence the plaintiff filed a suit against the defendant that its trademark rights were infringed.

The US court held that similarity doesn’t amount to an infringement of trademark. Here, the court held that Nature Lab’s intent on comparing Tommy Hilfiger’s trademark was not malicious, and hence the plaintiff’s suit was rejected.\(^4\)

### United Kingdom jurisdiction:

The United Kingdom already has created legislation on the subject of trademarks called the The Trademark Act of the United Kingdom, 1938. However, there were several issues with the original act which were amended in the later Act of 1994.

The Act takes a very liberal standpoint on the issue of comparative advertising, and sees it as a legitimate tool that is perfectly ethical and acceptable in the course of regular commerce. The prime objective behind this is to ensure that customers are as well informed as possible about the choices in front of them before they make a decision.

\(^2\) 2004 PTC 401.
\(^3\) 32 PTC 677.
\(^4\) *Supra* n. 2.
In the case of *Barclays Bank v. RBS Advanta*, the defendant circulated a brochure which showed the different interest rates and fees of various credit card companies, including that of the plaintiff. The plaintiff construed this as an infringement of their trademark. However, the court held that the defendant’s action was bona fide, in the sense that it only aimed to inform consumers about the possibilities related to credit card companies, and which one is better suited to their needs. Hence, the court gave the verdict that there was no trademark infringement.

**China jurisdiction:**

The law in China related to comparative advertising is quite different than the laws in the USA and United Kingdom. Here, any form of aggressive or comparative product advertising is not allowed, as China intends to promote consumer welfare rather than the manufacturers’ interests.\(^{15}\)

**CRITICAL ANALYSIS**

- In the sphere of comparative advertising, there are two kinds of activities which are noticeable. The first is *positive*, that implies that one competitor compares the rival’s product(s) in a non-disparaging way, whilst promoting his/her own product. The *negative* occurs when the competitor or manufacturer boosts his/her own goods, and condemns the product of another rival, which falls under the ambit of unfair trade practice, and is a questionable trade activity.\(^{16}\)

- Every jurisdiction has its own way of dealing with the pros and cons of comparative advertising, and decisions given are often a matter of discretion. Some countries allow comparative advertising and comparison of one product with another, as it increases consumer awareness about like products, but others condemn it as inappropriate and misleading.

- The use of a trademark in any advertisement is a way to let the consumer know that the particular product is the one that the consumer should opt for. It is the way through which the manufacturer connects with the consumer, and how a very important, intangible aspect of trade, goodwill, is created in the mind of the consumer. When this trademark is condemned by another manufacturer in their advertisement, via *negative* comparative advertising, the goodwill of the product depreciates in the mind of the consumer, which is very harmful to the trade of another competitor.

- Advertising plays a key role in the promotion of trademarks, and without it, any product cannot reach the consumer. The primary purpose of advertising is to make the consumer aware of the identity of the trademark, and consequently, the product. The second aim is to represent quality, which the consumer can associate with the trademark and the product it represents.

\(^{15}\) [http://www.legalservicesindia.com/law/article/1136/7/ANALYSIS-ON-COMPARATIVE-ADVERTISEMENT-RESULTING-IN-TRADEMARK-INFRINGEMENT](http://www.legalservicesindia.com/law/article/1136/7/ANALYSIS-ON-COMPARATIVE-ADVERTISEMENT-RESULTING-IN-TRADEMARK-INFRINGEMENT)

\(^{16}\) [http://nopr.niscair.res.in/bitstream/123456789/3600/1/JIPR%2011%286%29%20409-414.pdf](http://nopr.niscair.res.in/bitstream/123456789/3600/1/JIPR%2011%286%29%20409-414.pdf)
For example, KFC (Kentucky Fried Chicken) and the Colonel Sanders logo, are trademarks of the KFC food chain, and consumers all over the world associate the logo of Colonel Sanders with KFC and its food items. If another food chain were to, directly or indirectly, depreciate the value of KFC through the visual or auditory representation of the Colonel Sanders logo, then, it would cause tremendous loss to KFC, which would be catastrophic for their trade.

Hence, it is fair to say that comparative advertising in India is permissible, so long as the comparison of the two commodities does not cause harm or trade injury to the other competitor, or depreciates the value of one commodity in the eyes of the consumer. That is an unfair trade practice.

**Honest practice** in trade is a flexible term and nowhere defined in our laws, but by its very wording, it indicates fair play in trade. Comparative advertising does not escape its ambit, and if an advertisement comparing the trademark of a competitor with that of its own, disparages the former, then an action lies against the transgression committed by the concerned party.

**CONCLUSION**

It can be concluded by the above discussions that in the changing context of proliferation of advertisements, there is a need for law to be further strengthened in its application in India for the disputes arising out of comparative advertising. The judicial precedents have played an important role in determining the disputes arising out of comparative advertising, but they seem to be lacking still. The question is not whether a consumer has adequate remedies and protection against such unfair trade practices of corporations but whether the warring corporations have adequate protection from the law against unfair trade practices, and just system for competing amongst themselves in a fair fashion. The conclusion suggests certain changes that are to be brought so as to boost the laws relating to comparative advertising.

There is a need for a statute with respect to comparative advertising as with the widespread use of comparative advertising came many of the typical advertising abuses, which were also very vague. The most common types of abuses include: false claims, where the advertiser claims that his/her product does something that the other product fails to do; product disparagement, where the advertiser unjustifiably attacks a competitor’s product; and false representation, where the advertisement is misleading. The law needs to respond to these abuses in a number of ways and mere judicial pronouncements will not be enough.

---

17 [http://nopr.niscair.res.in/bitstream/123456789/401/1/JIPR%202013%281%29%20%282013%29%2028008%202013-27.pdf](http://nopr.niscair.res.in/bitstream/123456789/401/1/JIPR%202013%281%29%20%282013%29%2028008%202013-27.pdf)

18 *Supra* n. 19 at p. 24.
SUGGESTIONS

➤ There is an absence of the concept of comparative advertising in the Consumer Protection Act, of which manufacturers and advertisers are bearing the brunt. It would behoove the legislative body and the judiciary to set new precedents on this issue, which would provide a balance between the worries of the consumer and the woes of the companies.

➤ There is the need for a new law or set of regulations which can clearly demarcate as to what kind of transgressions fall within the ambit of comparative advertising. The punishments for such violations, along with adequate remedies must be laid out, so as to reduce the chances of product disparagement through comparative advertising.

➤ The reward of injunction alone is not sufficient to remedy the damage done by false or misleading comparative advertising. The loss in reputation suffered by the manufacturer of the product is irreversible, and the proper remedy would be an award of damages to restore the debtor of such advertising back to his/her original position, or as close as is possible.

➤ One remedy practiced in the United States is corrective advertising. By this it is meant that the defendant, by whose misleading advertisement the plaintiff has suffered loss in reputation, has to devise a new, corrective advertisement so as to nullify the damage done by the previous, impugned advertisement. This is helpful in restoring the plaintiff back to a state where his/her product may have a revived reputation or image in the minds of the consumers.
BIBLIOGRAPHY


- Semila Fernandes, Comparative Advertisement And It’s Relation To Trademark Violation – An Analysis Of The Indian Statute 2, 67 72-3 (2013).


- http://www.legalservicesindia.com/law/article/1136/7/ANALYSIS-ON-COMPARATIVE-ADVERTISEMENT-RESULTING-IN-TRADEMARK-INFRINGEMENT

- http://nopr.niscair.res.in/bitstream/123456789/3600/1/JIPR%2011%286%29%20409-414.pdf


- http://www.nishithdesai.com/fileadmin/user_upload/pdfs/NDA%20In%20The%20Media/News%20Articles/190214_A_COMP_ADSVS_PRODUCT_DISPARAGEMENT.pdf


- https://blog.ipleaders.in/comparative-advertisements-india/

- https://www.lexology.com/library/detail.aspx?g=1cf2e8f0-927c-4c06-8d22-5485e6be541e