



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## Comparative Advertising In India: Legal Boundaries Between Trademark Use And Product Disparagement

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### Abstract

Comparative advertising refers to promotion of a product by making comparisons with another product. Sometimes the companies while making these comparisons make exaggerated claims about their own product to establish superiority over the competing product. Comparative advertising encourages healthy competition and helps consumers make informed choices but sometimes the advertisers make false claims about the competing product and mislead the consumers. If these false claims damages the reputation and goodwill of the competitor's product, it can result in product disparagement and trademark infringement. The objective of this research paper is to explore the concept of comparative advertising and its intersection with trademark infringement and product disparagement, focusing on how they are understood and regulated under Indian law. The research paper adopts a doctrinal methodology relying on analysis of the legal provisions related to trademarks and advertising, particularly in relation to the Trade Marks Act, 1999, and the guidelines of Advertising Council of India, and also focusing on important court cases that have influenced the law. By examining statutes and various cases, this paper will analyse how Indian courts have balanced the marketing rights along with intellectual property rights. The study concludes that comparative advertising should be allowed to promote transparency in the market but it should be done by staying within ethical and legal boundaries to avoid consumer deception and brand disparagement.

**Keywords:** Comparative Advertising, Product Disparagement, Trademark Infringement, ASCI, Trade Marks Act.

### Introduction

Intellectual Property Rights (IPR) is a branch of law that recognizes and safeguard the original creations of an individual's intellect and effort. Trademarks are important not only for the protection of IPRs but also for the progress of emerging and established businesses. A trademark can be defined as any sign that can be represented graphically and helps in differentiating the goods and services of one business from another.<sup>3</sup> It may include device, brand, label, word, symbols, shape of goods, packaging or the combination of colours.<sup>4</sup> Businesses are known by their trademarks that helps people recognize and associate specific qualities with that business. Businesses usually register their trademarks under different legal framework in

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<sup>3</sup> Trade Marks Act, 1999 (Act 47 of 1999), s. 2(zb).

<sup>4</sup> Trade Marks Act, 1999 (Act 47 of 1999), s. 2(m)

different countries to protect their name and reputation. In the era of globalization and advent of technology, advertising is one of the most reliable and effective tool for capturing the interest of the consumers in a competitive marketplace. Advertising is the way businesses try to get people to notice a product or service by showing its benefits and features. Advertising is an important feature of any business as it helps in promoting the brand to consumers. But sometimes it becomes comparative when a product, service, or brand is compared to another brand to show its advantages or differences. This comparison may involve directly naming the competitor or indirectly making references. Comparative Advertising refers to promoting a product through advertising by making comparisons with any other brand competing in the same market. Comparative advertising, while letting the producer promote their products, can also result in disparagement of goods belonging to another individual's company. If the advertisement uses the trademark of any other company in any way and includes false claims and misrepresents its product, it can result in product disparagement and trademark infringement. This paper explores the legal framework for comparative advertising in India, examining the balance between brand promotions and unlawful disparagement. It also considers judicial pronouncements to analyse the status of comparative advertising in India.

### **What is Comparative Advertising?**

In Comparative advertising a company promotes their products or services by comparing it to a competitor's product or service. This can be done by directly naming the competitor or showing something that clearly represents them. A very important function of comparative advertisement is endorsing the pre-eminent qualities of the product and promoting competition in the market. It can be beneficial for the consumers as it provides information related to cost, quality, value of the product and helps them in evaluating different brands and making an informed decision.<sup>5</sup> Companies use different forms like newspapers, TV ads, online campaigns, or social media posts for comparative advertising.

Comparative advertising is not defined in the Indian law but is defined by UK regulations as "any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor."<sup>6</sup>

Comparative advertising is of two types:

1. **Indirect Comparative Advertising:** In this type of advertising, the name of the product being promoted by the adviser is mentioned but name of the competing brand is not directly mentioned. The comparison made is purely indirect although sometimes the representation used for the competing brand is enough for the consumers to recognize and identify it.
2. **Direct Comparative Advertising:** In this type of advertising, the competing product is clearly represented and identified, and the comparison made is direct. Even though these ads are not considered as unlawful but they are not allowed to disparage or insult someone else's goods to promote someone's brand. The example of Rin & Tide, and Pepsi & Coca-Cola are cases of direct or explicit advertising.

Comparative advertising supports healthy competition and helps customers make better and informed choices but causes legal problems if it goes too far like making false claims, misusing trademarks, or product disparagement.

### **Product Disparagement in Comparative Advertising**

Puffery, which refers to exaggerated and boastful claims that advertiser make about their company's goods, is allowed in both, direct and indirect, form of comparative advertising. These claims are subjective, cannot be verified and are not meant to be taken literally. However, problem arises when these comparisons go too far in their claims, damaging the reputation of other companies' product. Such comparisons equals disparagement of a product. According to Black's Law Dictionary disparagement is, "a statement about a

<sup>5</sup> Nazish Hena Khan, *Comparative Advertising in India: Concept, Status and Self-Regulatory Framework*, 3 J. Adv. Res. Jour. Mass Comm (2016).

<sup>6</sup> Art. 2, Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising, (2006), OJ L376/21

competitor's goods which is untrue or misleading and is made to influence or tends to influence the public not to buy.”<sup>7</sup>

Courts do not allow businesses to insult or damage the reputation of a competitor's specific product but allow fair and general comparisons between competing products in the market.<sup>8</sup> If the advertiser goes beyond the permissible legal grounds while comparing the products, leading to disparagement, he can be held responsible for the infringement of the company's trademark.<sup>9</sup> Moreover, Indian courts have increasingly recognised that product disparagement in the digital age poses fresh challenges. With the rise of social media advertising, influencer marketing, and viral campaigns, disparaging statements spread rapidly and can cause irreparable harm before judicial intervention can occur. This amplifies the importance of timely injunctive relief and robust self-regulation. Courts also face difficulties in distinguishing permissible puffery from unlawful disparagement when advertisements employ humour, satire, or parody.

### **Trademark Infringement in Comparative Advertising**

A trademark can be any sign, design, shape, packaging or symbol that can distinguish services and goods of one company from another company. The most important function of a trademark is to indicate the origin of services and goods, differentiate it from others and protect the mark from unauthorized use. Trademark infringement refers to the improper usage of a trademark or service mark for products or services in a manner that is likely to mislead, deceive or confuse regarding their true origin or source.<sup>10</sup> Infringement of trademark in advertising is addressed in the section 29(8) of the Trademarks Act. The section states that if an advertisement goes against the honest practices or hurts the uniqueness or reputation of a trademark of any brand, it is considered as an infringement. Whether a comparative advertisement qualifies as honest or not depends on the impression it leaves on the ordinary consumer. Generally speaking, honest practice in advertising means that the advertisement does not mislead the consumer, speak negatively or unfairly about competing goods or services, and does not lead to any kind of confusion in the mind of the average viewer. A trademark is said to be infringed in advertisement when such use takes unfair advantage of it and damages its reputation. If a company uses a registered trademark of a rival company to compare its own product with that of competitor, and demeans the rival company's product in the process, then it could be considered as both disparagement and trademark infringement. Trademark infringement in comparative advertising happens when using a competitor's trademark leads to consumer confusion, dilution of the mark's distinctiveness, or includes false or misleading claims. Even in the case of well-known trademarks, if comparative advertising violates conditions defined by the law, it may be considered as trademark infringement.<sup>11</sup> In evaluating trademark infringement, court takes the overall impression of the advertisement, intention of the advertiser and effect on consumer perception, into consideration.<sup>12</sup>

<sup>7</sup> Black's Law Dictionary 556 (4th ed. 1968)

<sup>8</sup> Abhimanyu Kumar, *Comparative Advertisement in India, UK & US and Product Disparagement*, Manupatra (2016), available at <https://docs.manupatra.in/newline/articles/Upload/C7ABDE0F-D274-49C7-A257-C99077D0C680.pdf>

<sup>9</sup> Kaylene C Williams & Robert A Page, *Comparative Advertising as a Competitive Tool*, 7 Journal of Marketing Development and Competitiveness 47-62 (2013), [http://www.na-businesspress.com/JMDC/WilliamsKC\\_Web7\\_4\\_.pdf](http://www.na-businesspress.com/JMDC/WilliamsKC_Web7_4_.pdf)

<sup>10</sup> *About Trademark Infringement*, USPTO (Jan. 08, 2025), <https://www.uspto.gov/page/about-trademark-infringement>.

<sup>11</sup> Uphar Shukla, *Comparative Advertising and Product Disparagement Vis-À-Vis Trademark Law*, 11 Journal of Intellectual Property Rights 409-414 (2006), <https://docs.manupatra.in/newline/articles/Upload/597132AB-96EC-4DB0-8A82-8D732D603A14.pdf>

<sup>12</sup> Mahima Shree, *Trademark Infringement in Comparative Advertising under Indian Law*, 4 IJLAR (2024).

## Legal Framework for Comparative Advertisement in India

Comparative advertisement is not explicitly stated in Indian law but it is regulated under statutory provisions and judicial interpretations. Indian Trademarks Act and ASCI have a pivotal role in regulating comparative advertising. In Indian context, the principles governing comparative advertising and product disparagement involving trademarks are derived from the case of *Irving's Yeast-Vite Ltd. vs F. A. Horsenail*.<sup>13</sup>

### 1. The Trade Marks Act, 1999

Infringement of registered marks is governed by the Section 29 of the Trade Marks Act. Section 29(8) lays down the conditions that render the use of registered trademark in advertisement as an act of infringement. These conditions are:

- If use of the marks in advertisement exploit the marks unfairly and violates principles of honest commercial conduct;
- If such use diminishes the distinctive qualities of the mark; or
- If such use harms the goodwill associated with the trademark.<sup>14</sup>

Section 30(1) of the legislation further clarifies that Section 29 does not stop anyone from using a registered mark to indicate that certain products or services are associated with the trademark owner, provided the use is honest in commercial or industrial dealings and does not unfairly exploit the trademark or impair its unique identity or reputation.<sup>15</sup>

### 2. Advertising Standards Council of India

The Advertising Standards Council of India (ASCI) established in the year 1985 is dedicated to promoting self-regulatory practices to ensure that advertisements are fair, abide by rules and safeguards consumers' interests.<sup>16</sup> ASCI is not a government organization and does not make rules that are binding for the public or businesses.

With respect to the approach and format of comparative advertising, Chapter IV of the ASCI Self-Regulation Code says that ads comparing products or brands are allowed to support healthy competition and share information freely but only if certain rules are followed:

1. The advertisement clearly specify which features of the promoted product is compared to which specific features of the rival's product.
2. The focus of the comparison must not be selected merely to give the advertiser an unfair or fake advantage, or to make it seem like a better deal than it really is.
3. The comparisons should be based on facts, must be correct, and should be capable of substantiation.
4. The comparison must not create any likelihood of misleading the consumer, whether about the promoted product or the one it is being compared to.
5. The advertisement should not unfairly insult, criticize, or put down someone else's products, brands, or ads whether directly or indirectly.<sup>17</sup>

Though the Advertising Standards Council of India (ASCI) operates as an independent, non-governmental regulatory body, its rules and decisions are respected and often cited by courts in judicial reasoning. ASCI's efforts to support fair advertising are well recognized, and its guidelines are accepted under some laws and by judicial body.<sup>18</sup>

### 3. Judicial Interpretations

The Indian judiciary has played an important role in explaining and setting boundaries on comparative advertising, especially without any clear statutory definitions.

<sup>13</sup> Niharika Bodla, Comparative Advertising and Trademark Infringement, 3 INT'L J.L.MGMT. & HUMAN. 596 (2020).

<sup>14</sup> Trade Marks Act, 1999 (Act 47 of 1999), s. 29(8).

<sup>15</sup> Trade Marks Act, 1999 (Act 47 of 1999), s. 30 (1)

<sup>16</sup> *The ASCI Code*, ASCI <https://www.ascionline.in/the-asci-code/>.

<sup>17</sup> Id., Chapter IV (1).

<sup>18</sup> *Addressing the Issue: ASCI's Role and the Limits of its Authority*, SCC Times (Oct. 14, 2024), <https://www.sconline.com/blog/post/2024/10/14/addressing-the-issue-ascis-role-and-the-limits-of-its-authority/>.



**Reckitt & Colman of India Ltd. vs Kiwi T.T.K. Ltd.**<sup>19</sup> – Reckitt & Colman, the petitioner, manufactured and marketed liquid shoe polish branded as Cherry Blossom Premium Liquid Wax Polish. The respondent, KIWI, also made and advertised its own liquid polish. In his advertisement KIWI claimed that its product was superior to Cherry Blossom, citing reduced wax levels and increased acrylic content, which it claimed could damage shoes. The bottle that KIWI used on its website for comparing was similar in appearance to the petitioner's product. This ad was widely circulated through electronic media and featured on printed posters at shops where the product was sold. Because it was harming the image of their own product, an application for an injunction was brought by the plaintiff to discontinue the advertisement aired by the defendant that was damaging its reputation. The Court held that the defendant had disparaged the petitioner's product and ordered the respondent to stop the advertisement. The Delhi High Court further asserted that although a company can promote its own product or say it is of better quality, it should not do so by deterring the image of its competitor.

**Reckitt & Colman of India Ltd. vs M.P Ramachandran & Anr.**<sup>20</sup> - In this case, the claimants manufactured a fabric brightening product called 'Robin Blue' and held a registered design for the contour of their bottle. The respondents, who sold a similar product, released an advertisement saying their whitener was not only cheaper but also more effective. They showed a bottle in the advertisement that looked like the plaintiff's bottle in both shape and price, making it clear to consumers which brand was being compared. The Calcutta High Court held that the commercial was produced with the intention to insult or damage the reputation of the claimant's product. In cases of comparative advertising and product disparagement, the Court specified five principles for granting injunctions, stating:

- “1. A tradesman is entitled to declare his goods to be best in the world, even though the declaration is untrue.
2. He can also say that my goods are better than his competitors', even though such statement is untrue.
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', 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.
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.”<sup>21</sup>

**Pepsi Co., Inc. And Ors. vs. Hindustan Coca Cola Ltd And Anr.**<sup>22</sup> – The Delhi High Court ruled that the term “PAPPI” displayed on the respondent's bottle in the advertisement was indicative of the plaintiff's product, “PEPSI”. The Court emphasized that the manner of the advertisement plays an important role, if it mocks or insults a competitor's product, it becomes a case of product disparagement. The respondents showed PEPSI as just a sweet drink and called it “Yeh Bacchon Wali Hai,” that mocked and belittled it in an unacceptable way. As a result, an injunction was granted by the court to prevent the advertisement from being published and aired.

**M/S Unibic Biscuits India Pvt. Ltd. vs M/S Britannia Industries Limited**<sup>23</sup> - In 2007, Unibic introduced a new biscuit called Great Day in the market with the tagline, “Why have a good day, when you can have a great day.” The petitioner alleged that it was a violation of their trademark rights and was a direct dig at their product “Good Day”. The plaintiff argued that the defendant tried to highlight and exploit their registered mark Good Day by this comparison. The court assessed the case by considering the

<sup>19</sup> Reckitt & Colman of India Ltd. v. Kiwi T.T.K. Ltd., 63 DLT 29 (Del. H.C. 1996).

<sup>20</sup> Reckitt & Colman of India Ltd. v. M.P. Ramachandran & Anr., 1999 (19) PTC 741 (Cal.).

<sup>21</sup> *Reckitt & Colman of India Ltd. v. M.P Ramchandran & Anr.*, Judgment

<https://www.casemine.com/judgement/in/5ac5e5604a93261ae6b6d31e>.

<sup>22</sup> Pepsi Co., Inc. v. Hindustan Coca Cola Ltd., 2003 (27) PTC 305 (Del. H.C.).

<sup>23</sup> Unibic Biscuits India Pvt. Ltd. v. Britannia Indus. Ltd., AIR 2008 (NOC) 2496 (Kant. H.C.).

advertisement's intent and purpose, the way it was marketed, and the message conveyed to the public at large. The court granted an injunction against Unibic for exaggerating facts and for disparaging the plaintiff's goods.

**Dabur India Limited vs Emami Limited<sup>24</sup>** - In this case, the court addressed concerns regarding an advertisement by Emami for its product "Amritprash." The court stated, "the defendant is propagating in the advertisement that there should be no consumption of Chayawanprash during the summer months, it is also propagating that the plaintiffs Chayawanprash should not also be taken during the summer months as it is not good for health and instead Amritprash, which is the defendant's product, should be taken. Such an advertisement is clearly disparaging to the product of the plaintiff as there is an element of insinuation present in the said advertisement."<sup>25</sup> Therefore, the court issued an injunction restraining the advertisement for indirectly targeting and damaging the reputation of the petitioner's product.

**Colgate Palmolive (India) Ltd. v. Anchor Health & Beauty Care Pvt. Ltd.<sup>26</sup>** - In this case, Anchor ran advertisements claiming its toothpaste was superior to Colgate's, using phrases like "only toothpaste with all three ingredients." The Delhi High Court held that while comparative advertising is allowed, making unsubstantiated claims or denigrating a competitor's product amounts to disparagement and is not permissible. The court granted an injunction against Anchor, emphasizing that comparative advertising must not mislead or unfairly criticize the competitor's product.

**Godrej Sara Lee Ltd. v. Reckitt Benckiser (I) Ltd.<sup>27</sup>** - Here, Godrej challenged an advertisement by Reckitt Benckiser for its mosquito repellent, which implied that Godrej's product was ineffective. The Bombay High Court ruled that while a manufacturer can claim its product is better, it cannot claim the competitor's product is bad or harmful. The court found Reckitt's advertisement to be disparaging and granted an injunction, reinforcing the principle that comparative advertising must not cross into product disparagement or trademark infringement.

### Challenges and Issues in Comparative Advertising

Even though there are laws to regulate comparative advertising in India, many problems continue to exist. These problems have become more serious with the growth of digital marketing, where advertisements can quickly reach large audiences. The main challenges are:

#### 1. Unclear Legal Boundaries:

It is not always easy to tell the difference between fair comparison and unfair attack on a competitor's product. Because the rules are not very clear, courts often give different decisions depending on the case. This makes it hard for companies to know if their advertisement will get them into legal trouble.

#### 2. Impact of Digital Platforms:

Comparative advertisements can spread very fast on social media and digital platforms. If an advertisement contains misleading or harmful statements, it can damage a competitor's reputation before any legal action can stop it. This makes it difficult to control or correct harmful content once it is out in public.

#### 3. Consumer Confusion:

When consumers see the same type of comparative ad again and again — especially if it looks or sounds similar to the competitor's branding — they may get confused about who makes the product or how good it is. This weakens the trademark's role as a sign of where the product comes from.

#### 4. Lack of a Single Law:

India does not have one complete law that deals with all aspects of comparative advertising. Instead, companies have to depend on different laws, ASCI guidelines, and court decisions. This patchwork system is not always effective and can lead to uncertainty.

<sup>24</sup> Dabur India Ltd. v. Emami Ltd., 2004 (29) PTC 1 (Del. H.C.).

<sup>25</sup> Dabur India Limited v. Colgate Palmolive India Ltd., Judgment <https://www.casemine.com/judgement/in/56090b9de4b01497111750e9>.

<sup>26</sup> Colgate Palmolive (India) Ltd. v. Anchor Health & Beauty Care Pvt. Ltd., 2003 (27) PTC 478 (Del).

<sup>27</sup> Godrej Sara Lee Ltd. v. Reckitt Benckiser (I) Ltd., 2006 (32) PTC 307 (Del).

### **5. Weak Enforcement:**

ASCI's rulings are important but they are not legally binding. Although courts can stop harmful ads through injunctions, the process takes time. Meanwhile, the misleading advertisement might continue to harm the brand that is targeted.

### **6. Problems with Global Advertising:**

Today, advertisements often appear in many countries at once, especially on the internet. But because different countries have different rules about comparative advertising, it can be hard for international brands to follow all the rules. This creates more legal challenges.

### **Recommendations for Reform**

India needs clear and unified laws to regulate comparative advertising, as the current rules are scattered and unclear. The Advertising Standards Council of India (ASCI) should be given legal recognition and limited enforcement powers to strengthen self-regulation. Advertisers must be required to back their claims with reliable data and clearly explain their comparisons to avoid misleading consumers.

Stronger penalties and corrective advertising can help deter harmful ads. With the rise of digital and global advertising, India should set up faster enforcement systems and work with international agencies to handle cross-border issues. Clear guidelines on puffery and disparagement, sector-specific codes, self-declarations, public awareness drives, and AI-based ad monitoring can further promote fair and responsible advertising.

### **Conclusion**

Based on the above analysis it is obvious that comparative advertising despite its challenges, plays an important role by increasing competition in the market, enhancing awareness among the consumers, and strengthening product recognition. Therefore, it should be permitted but within reasonable legal boundaries. Indian Courts from time to time by their judicial pronouncements have tried to balance the marketing rights of the advertiser along with IP rights of the competitors. The court has made its stance clear about advertisers' not being allowed to make misleading claims and disparage competitors' products when puffing their own products while promoting. As advertising in India is getting digitally amplified, businesses need to be careful. They should use comparative advertising to compete fairly, not to attack other brands. A legal comparison should help people inform, not mislead and promote, not provoke.