

Comparative Advertising and the Consumer - Changing Dynamics

Biplab Kumar Lenin[†] and Arun Babu

IIT Kharagpur, Kharagpur, West Bengal -721 302, India

Received 27 October 2015; accepted 10 June 2017

Advertisements are designed to introduce products and services to prospective consumers. Every company wants to leave most impact on a consumer in the short duration of an advertisement and hence, advertising wars between market players dealing in similar products/services is not new. In common parlance, this is known as “comparative advertising”. These comparisons are sometimes veiled and sometimes blatant. This paper discuss the law related to comparative advertising in India. It discuss issues involved in comparative advertising and looks at more recent evolution of case law wherein courts have factored consumer interest in deciding cases of comparative advertisements. The paper notes legal position in other jurisdictions and highlights various competing interests involved in cases related to comparative advertisements.

Keywords: Comparative advertising, trademark, trademark infringement, product disparagement, unfair competition, injunction, Trade Marks Act, 1999, Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, Competition Act, 2002, Advertising Standards Council of India, Consumer Complaints Council

Trademarks aim to protect consumers from confusion regarding the origins of their purchases.¹ The consumer is always the focal point when it comes to trademark of any goods or services. The Trade Marks Act, 1999 (“Act”) contains specific provisions which deal with trademark infringement by comparative advertising.² The intention behind such provision is to ensure that an advertiser can promote his/her goods by providing superior quality in comparison to others. This could be achieved when product/services are compared diligently. Thus, advertising, if done in good faith and on factual basis, helps consumers to make informed choices in purchasing goods and services.

With rapid economic expansion, the average Indian consumer today has a wide range of products and services to choose from,³ giving rise to a problem of plenty. This is where comparative advertisements can come to her rescue as they present comparison between two products which enables her to take right decision. However, the consumer can be misled, if the advertiser resorts to cheap gimmicks to disparage the competitor's products or engages in mere puffing up of his goods. Black's Law dictionary defines 'disparagement of goods' as a statement about a competitor's goods which is untrue or misleading

and is made to influence or tends to influence the public not to buy.⁴ Disparagement means “to speak of slightly, undervalue, to bring discredit or dishonour upon, the act of deprecating, derogation, a condition of low estimation or valuation, a reproach, disgrace, an unjust classing or comparison with that which is of less worth, and degradation”.⁵

Categories of Comparative Advertising

Comparative advertisements may be divided into following categories:

- i. Advertisements asserting that they are better than others in the market with/without referring to any particular competing product;
- ii. Advertisements asserting that they are better than a particular class or categories of products/services in the market;
- iii. Advertisements asserting the measurable features of the products/services and making an objective comparison;
- iv. Advertisements providing the information already provided by the competitors in their advertisement or catalogue, but stating the deficiencies of a competitor product *vis-a-vis* their product;
- v. Advertisements referring to the competitor's product with a blurred trademark blurred; and
- vi. Advertisements directly claiming that they are better than any single product/competitors

[†] Corresponding Author:
Email: biplablenin@gmail.com and biplablenin@iitkgp.ac.in

Communicating Comparative Advertisement to Public

The mode of communication plays pivotal role in the advertising strategy. For example, an advertisement may reach a consumer through print media (newspapers, articles, journals, etc.), audio-visual media (television, internet, movies, etc.), or audio (FM/AM radio). For instance, advertising in audio-visual medium does not properly reflect the information provided with the (*) mark. When the same advertisement is presented in the print medium, it becomes easy for the consumer to refer terms and conditions which are usually missed in audio-visual. Therefore, the mode of advertisement leaves an impact in the mind of the consumers, even the discerning ones.

Comparative Advertisement and Trademark Infringement

Advertisement can be defined as the making of a “representation (in any form) in connection with a trade, business, craft or profession in order to promote the supply of goods” and comparative advertisement is “any advertisement which explicitly or implicitly identifies a competitor or goods or services offered by a competitor”.⁶ The Constitution of India protects freedom of speech and expression in Article 19(1) (a). In reference to this Article, the Supreme Court of India has held advertisements to be commercial free speech.⁷

The idea behind the comparative advertisements is to demonstrate to the consumer why the advertiser’s products/ services must be preferred over its competitor’s by objectively comparing its relevant features with that of the competitor. From an advertiser’s perspective, comparative advertising plays a vital role in describing unique aspects of the product/service. However, from a consumer’s perspective, comparative advertising plays a vital role in choosing products/services as per the requirements.

Monopolies and Restrictive Trade Practices (MRTP) Act, 1969⁸ which regulated competition in India before Competition Act, 2002 included provisions related to ‘disparagement of goods of another person’. Under the MRTP Act, unfair trade practices in comparative advertisements included any representation which gives false information or disparages the goods or services of another person. It listed several actions as unfair trade practices.⁹ Competition Act, 2002 defines “unfair competition” as adoption of practices such as collusive price fixing, deliberate reduction in output in order to increase

prices, creation of barriers to entry, allocation of markets, tie-in sales, predatory pricing, discriminatory pricing, etc.¹⁰

Trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of those others.¹¹ Section 29 of the Trademarks Act, 1999¹² states that a registered trademark is infringed by any advertising of that mark, if such advertising takes unfair advantage and is contrary to honest practices in industry or is detrimental to the distinctive character of the mark. However, there are certain exceptions to such provision which states that nothing shall prevent the use of a registered trademark by any person for the purpose of identifying goods or services as those of the proprietor provided the use is in accordance with the honest practices in industrial or commercial matters, and is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.¹³ The Act permits comparative advertising if the use of trademark is bonafide and is in accordance to honest practices and if it does not take an unfair advantage of the reputation of the mark or is detrimental to its detrimental character. It is pertinent to note that “honest practice” is not defined in the Act.

The European Court of Justice in *Holterhoff v Freiesleben*¹⁴ described the concept “honest practice” as expressing a duty to act fairly in relation to the legitimate interests of the trademark owner, and the aim as seeking to reconcile the fundamental interests of a trademark protection with those of free movement of goods and freedom to provide services in the common market.¹⁵

The Advertising Standards Council of India Code on Advertising¹⁶

The Advertising Standards Council of India (“ASCI”) is a self regulating voluntary organization of the Indian advertising industry. ASCI have drawn up a Code on advertising. As per Rule 7 of the ‘Programme and Advertising Codes prescribed under the Cable Television Network Rules, 1994,¹⁷ no advertisement which is in contravention of the Advertising Standards Council of India Code on advertising shall be aired on cable service. Chapter 4 of the ASCI code deals with comparative advertisements and states that comparative advertisements are permissible in the interests of vigorous competition and public enlightenment provided that:¹⁸

- Advertisement clearly reflects aspects of the products under comparison.
- The subject matter of comparison is not chosen in a way which confers an artificial advantage upon the advertiser or falsely suggests that advertiser's product is better. The comparisons are factual, accurate and capable of substantiation.
- The comparison will not mislead the consumer with respect to advertiser's or competitor's product.
- The advertisement does not unfairly denigrate attack or discredit other products, advertisers or advertisements directly or by implication.

The code also mandates that advertisements shall not take unfair advantage of the goodwill attached to the trademark or symbol of another firm or its product. ASCI have also constituted a Consumer Complaints Council (CCC). The CCC consists of eminent persons from the industry and well known persons from the civil society.¹⁹ A person can complain to the ASCI if an advertisement is objectionable. Upon receiving a complaint, the CCC, hears the defense of advertiser. If CCC finds that the advertisement in question violates ASCI code or any other law, then it can suggest that the advertisement be voluntarily either withdrawn or modified.²⁰ The process of filing of complaint is user friendly and convenient to general public. The website also allows the concerned person to track the status of the complaint as well and is very transparent in its operations.²¹

Recently, ASCI had banned 82 ads out of 148 complaints it received across segments during June 2015, which includes L'Oreal, CavinKare, Vicco, Complan, CNBC, India Today, Flipkart, BSNL, Uber, Snapdeal, and Honda for providing misleading or false or not adequately/ scientifically substantiated information in their advertising.²² ASCI has also acted on a consumer complaint about Airtel's 4G speed challenge ads and has sent a notice to the telecom operator stating the ad campaign is misleading. Airtel has replied to the notice stating that its claims including the one related to "fastest internet speed" are based on "rigorous test conditions". Airtel has also provided data in support of their position.

Evolving Interpretation in India

For quite some time, Indian courts were giving leeway to the advertisers for making 'puff statements' i.e. exaggerated claims about their products. There was no line drawn even in case of an untrue claim about a product. Usually, in the case of comparative

advertisement, puff statements form a regular feature.²³ However, in the recent past, Indian Courts have provided certain clarity on this point.

In *Reckitt & Coleman Of India Ltd. v Kiwi T.T.K. Ltd.*,²⁴ The Delhi High Court held that the advertiser can claim that his goods are the best in the world even though it is untrue. The advertiser can compare his goods with that of the competitors and can state that his goods are better; however, in doing so he cannot state that the competitor's goods are bad as this would amount to defamation. No cause of action arises if there is no defamation to the goods and action lies if there is such defamation. Court has the power to grant an order of injunction in this regard.²⁵

The Court held that:

- An advertiser can declare his product to be the best in world.
- An advertiser can state that his product is better than his competitors.
- An advertiser can compare the advantages of his product over the product of others.

However, an advertiser while saying his products are good, cannot say that others products are bad. In, *Pepsi Co. Inc. & ors. v Hindustan Coca Cola Ltd.*,²⁶ it was held that the generic disparagement of a rival product without specifically identifying or pin pointing the rival product is equally objectionable. Court in this case laid down the tests for disparagement which are

- Intention of the commercial;
- Manner of the commercial;
- Storyline of the commercial and message sought to be conveyed by the commercial.

Court in this case observed that if the advertisement ridicules or criticizes the product/services of the competitor, it amounts to disparagement. However, if the advertisement suggests that one's product/services is better without referring to competitor's product/services, the same may not be actionable.

Clever advertising can indeed hit a rival product without specifically referring to it. Once it is made out that the trademark of the competitor has been used, and then the next question is whether the mark has been used in such a manner to disparage and denigrate the goods of the rival trademark owner. The Court further observed that:

- Advertisement is free speech and protected under the Constitution,
- Advertising must not be false, misleading or unfair

- iii. Grey areas need not necessarily be taken as serious representation of facts but only as glorifying one's product; and
- iv. While glorifying its product, an advertiser may not denigrate or disparage a rival product.

In *Karamchand Appliances Pvt. Ltd v Sh. Daiquiri Brothers and Ors*,²⁷ it was held that while a claim that the goods of a manufacturer or the tradesman are the best may not provide a cause of action to any other trader or manufacturer of similar goods. The moment the rival manufacturer or trader disparages or defames the goods of another manufacturer or trader, the aggrieved trader would be entitled to seek relief including redress by way of a prohibitory injunction. Same view was taken by the Court in *Dabur India Ltd. v Wipro Ltd*²⁸ and *Dabur India Limited v Colgate Palmolive India Ltd*. Court in this case observed that there is no fixed formula to decide if the goods of a manufacturer are disparaged or not and it would depend on facts and circumstances of each case. It was also observed that court need to be conscious that while disparagements may be direct, clear and brazen; they may also be subtle, clever and covert.

In *Dabur India Ltd v Colgate Palmolive India Ltd*,²⁹ the Hon'ble Court affirmed that glorifying one's product is permissible if the same does not ridicule or criticize the product/services of the competitors. The Court further held that if there is a mention of any specific advantage which is objective then the same should be scientifically proven. In this case, it was mentioned by the advertiser that their products were 130% better than the competitors. The advertisement also showed how the defendant's product was sixteen times less abrasive than the plaintiff's product and thereby less damaging to the teeth.³⁰ The Court found that the defendant made a reference to the class of goods only and did not specifically make a reference to the plaintiff's product. However, since the plaintiff was a major player in the market having 85% share of the market, it was entitled to an injunction. The Court held that this was a straightforward case of disparagement, which could not be allowed under any circumstances unless the claims made in the advertisement are scientifically proven. It was reiterated that even if there is no direct reference to the any specific product and a general reference is made to the entire class if product, there can be a disparagement.

The decision in *Godrej Sara Lee Ltd. v Reckitt Benckiser (I) Ltd*³¹ was an important decision in

which Court explained the meaning of honest comparative advertising. In this case, the defendants advertised their product 'Mortein'. It was meant to kill both cockroaches and mosquitoes and the advertisement highlighted this aspect. The plaintiff claimed that this disparaged their product 'Hit', which had two separate products for killing cockroaches and mosquitoes. The Court observed that the advertiser has a right to boast of its technological superiority in comparison with product of the competitor and held that the advertiser could use one single product to kill two different species of insects without undermining the plaintiff's products, by no stretch of imagination amounted to disparaging the product of the plaintiff.³²

A significant departure from the above traditional approach on commercial puffery was taken by the Madras High Court in the case of *Colgate-Palmolive (India) Limited v Anchor Health & Beauty Care Private Limited*.³³ This case was unique as this was the first-time Court took into consideration 'consumer interest' while deciding a dispute related to comparative advertising. The Court observed that the law as it developed from the decision of the Calcutta High Court in *Reckitt Colman v M. P. Ramachandran*³⁴ up to *Godrej Sara Lee* case³⁵ on the basis of English precedents recognizes the right of advertisers to puff their own products even with untrue claims without denigrating or slandering other's product. But the recognition of this right of the advertisers would be to de-recognise the rights of the consumers guaranteed under the Consumer Protection Act, 1986. To permit two rival traders to indulge in puffery without denigrating each other's product would benefit both but would leave the consumer helpless. On the other hand, the consumer stands to benefit when the falsity of the claim of a trader about the quality and utility value of his product is exposed by his rival.

Consumer education in a country like India is possible only by allowing a free play for the trade rivals in the advertising arena so that each exposes the other. Therefore, it is only on the touchstone of public interest that such advertisements are to be tested. The Court also held that the consumers stand to gain the most by virtue of comparative advertising as the competitor is in the best position to expose the drawbacks of rival products which would enhance consumer education. Further it was observed by the Court that puff statements amount to unfair trade practice under the Consumer Protection Act and held

that recognition of the right to puff would amount to de-recognition of the rights of the consumer guaranteed under the Consumer Protection Act.

A judgment of the Delhi High Court in the case of *Dabur India Ltd. v M/S Colortek Meghalaya Pvt. Ltd.*³⁶ is a landmark judgment on the law related to comparative advertisements. The consistent view taken by the Courts till this judgment, except for the Colgate case,³⁷ was that advertisers can claim that his products are the best in the world, compare his goods with those of his competitor's and state that his goods are better even if his claims are false. The advertiser in all these cases was only prevented from disparaging or denigrating his competitor's goods. In this case, the Delhi High Court first discussed the limits of commercial speech as set out by the Supreme Court in *Tata Press v MTNL*.³⁸ In this case advertisements were held to be part of commercial speech under Article 19 (1) (a). It was further held in the *Tata Press* case that protection under Article 19 (1) (a) is not available if the advertisement is false, misleading, unfair or deceptive. This judgment of the Supreme Court in *Tata Press* was taken into consideration and it was held that an advertiser cannot make unsubstantiated false claims even about his own goods as it is not protected under commercial free speech. It was further held that, while hyped-up advertising may be permissible, it cannot transgress the grey areas of permissible assertion, and if does so, the advertiser must have some reasonable factual basis for the assertions made in the advertisement. It is not possible, therefore, for anybody to make an off-the-cuff or unsubstantiated claim that his goods are the best in the world or falsely state that his goods are better than that of a rival.

In *Annamalayar Agencies v VVS and Sons Pvt. Ltd.*,³⁹ it was held that held that, the following factors that are to be kept in kind while dealing with a case of disparagement

- i. Intent of the commercial;
- ii. Manner of the commercial;
- iii. Storyline of the commercial;
- iv. Message sought to be conveyed by the commercial.

It was also reiterated in *Godrej Consumer product limited vs. Initiative media advertising*⁴⁰

To provide some clarity, in the recent case of *Havells India Ltd & anr v Amritanshu Khaitan*,⁴¹ Hon'ble Delhi High Court laid down certain tests that are to be applied for the purpose of comparative

advertising. The tests include, standard used in deciding a case of comparative advertisement, test of 'honest' advertising⁴² and test of a misleading advertisement. It held that the standard used in deciding a case of comparative advertisement is different from the strict standards used in interpreting a will or a clause of an agreement. The Court also dealt with the issue relating to whether for an advertisement to be an 'honest' one and held that if an advertiser is highlighting only a special feature of his product/services which makes it distinct from that of his competitor's, he is allowed to do so as long as the comparison is true and failure to compare all features of a product while comparing will not amount to disparagement.

Recently, in the *Hindustan Unilever Limited v Gujarat Co-Operative Milk Marketing Federation and Others*⁴³ the Bombay High Court has restrained airing of Amul's advertisement on ice cream. The issue was two television commercials by Amul suggesting "use real milk amul ice cream and not frozen desserts which has vanaspati". The advertisement also used the tagline "Amul is real milk, Real ice cream" on the top left corner. The nature of the comparative advertising in this suit was of "generic disparagement/slander of goods" for the product referred as "frozen desserts". Justice S J Kathawalla, while granting an injunction to applicant, held that the advertising was disparaging the entire category of frozen desserts including applicant's product. Court further held that, the advertisement is disseminating wrong information and thereby creating confusion amongst the viewers. Though, the defendant contended that the advertisement was in the pretense of educating the public, as viewers/consumer's need to know that frozen desserts contain vegetable/vanaspati oil. Court noted that the advertisement is not fair; as totally different features were compared in the advertisement i.e. milk content of one product is compared with the fat content of the other product. Hon'ble High Court while disposing the interim application reiterated that a fundamental right to free speech cannot be abused to malign, discredit or belittle a rival manufacturer's product by a negative campaign. Indulging in vicious, false and misleading statements against any competitors are not tenable and cannot be allowed. The Court also noted that the ASCI was being used selectively by the plaintiff as it initially filed complaints before the ASCI while subsequently referred to the ASCI as a "Kangaroo Court" in its pleadings. The suit is pending before the Court.

To sum up, it has been held by the courts that:

- i. When an advertisement is made in reference to the entire class of products, all and everyone fitting the description is affected. Manufacturer of a product even though such product is not identified by name, can seek injunction against such disparagement.
- ii. One can puff his products or can boast his product over the products available in the market, but cannot be allowed to insinuate, disparage or denigrate competitor's product, either by direct reference to a specific product or by generic references. Consumer having a mistaken impression may be permissible but misleading impression is not allowed.

To conclude, law as laid down by the Indian Courts on comparative advertisements is that an advertiser engaging in comparative representations cannot disparage or defame the goods of his rival. About puffing up of the advertiser's own product, the traditional view is that puffing can be done to any extent as long as the rival's goods are not denigrated. Though the scenario about comparative advertisement has developed significantly, a definitive ruling by the Supreme Court which settles the inconsistency in this regard is awaited.

Position of Law in the United Kingdom

Indian law is largely similar to English common law because of the long period of British colonial influence during the British Raj period. The Indian Courts while deciding cases related to comparative advertising have very often referred to English judgments. In fact, a significant portion of Indian intellectual property law jurisprudence is derived from the United Kingdom. The status of comparative advertisement in the U.K. and U.S.A. has been progressive when compared to India. Advertisers are not allowed to make claims which are untrue without providing any supporting evidence; however, the advertisers are allowed to advertise stating that the competitors' product is inferior, provided it is supported with valid and reasonable claim.

One of the earliest decisions on comparative advertisements was delivered by the House of Lords in *White v Melin*,⁴⁴ wherein it was held that plaintiff had to establish tort and mere puffing of products would not amount to disparagement. Same view was taken by the Chancery Division in *De Beers Abrasive Products Ltd. and Ors. v International General Electric Co. of New York*⁴⁵ wherein it was observed

that "it is a blinding glimpse of the obvious to say that there must be a dividing line between statements that are actionable and those which are not; and the sole question of dry point of law such as we are discussing here is: where does the line lie? On one hand, it appears to me that the law is that any trader is entitled to puff his own goods, even though such puff must, as a matter of pure logic, involve the denigration of his rival's goods. Thus, in the well known case of the three adjoining tailors who put notice in their respective windows reading: 'The best tailor in the world', 'The best tailor in this town', and 'The best tailor in this street', none of the three committed an actionable offence. Where, however, the situation is not that the trader is puffing his own goods, but turns to denigrate those of his rival, then, in my opinion, the situation is not so clear cut.

The statement: 'My goods are better than X's is only a more dramatic presentation of what is implicit in the statement: 'My goods are the best in the world'. Accordingly, I do not think such a statement would be actionable. At the other end of the scale, if what is said is: 'My goods are better than X's, because X's are absolute rubbish', then it is established by Dicta of Lord Shand in the House of Lords in *White v Mallin*, which were accepted by counsel for the defendants as stating the law, the statement would be actionable."

However, if true facts or representations have led to disparagement of rival goods, then advertisers cannot be held to be liable. In *Cable & Wireless PLC v British Telecommunications*,⁴⁶ the defendants issued an advertisement brochure comparing the prices of its telephone services with those of the plaintiff. The Court refused to grant injunction because the information which was used by the defendant for advertisement was not false. Similar rulings have been given in numerous English cases,⁴⁷ where it has been held that if the comparison is honest, it should be allowed irrespective of it being disparaging or not.

Comparative Advertising-From the Consumer's Eyes

Comparative advertising, if done in a proper way can be a boon to consumers. Ideally it should provide necessary details, analysis and proper comparison with competitor's product. However, misinformation or improper/inadequate information could confuse or deceive consumers.

Post liberalization and especially in the past decade, both foreign and Indian companies have been making a beeline for the Indian market. Decision

making has become tough and tedious for the Indian consumer as they now have a plethora of choices before them. Comparative advertising fosters healthy competition in the market. If a brand is run down by its rival, and the same is being done by providing the requisite scientific evidence which proves the inferiority of the rival brand, it will give a wake-up call to the rival brand. The fear of being exposed ensures that rival brands are kept on their toes which ultimately lead to the consumer getting the best goods/services at the best prices. Comparative advertising thus makes the consumer quality-conscious if the advertiser takes on his rivals on the quality front.⁴⁸

However comparative advertisements fail to serve their purpose, if they become a medium only for the advertiser to make inflated claims about their product. The whole idea gets defeated if comparative advertisements merely puff up the advertised product without giving any useful information to the consumer. An illustration of this is the series of advertisements brought out by Pepsi and Coke⁴⁹ (popularly referred to as 'cola wars'). Such advertisements subvert the very essence of comparative advertising and reduce it to mere mockery.⁵⁰ Unfortunately this form of comparative advertising seems to be a growing trend in the advertising domain today. As pointed out earlier in this paper, the Indian Courts in the past seem to have supported this disturbing movement by allowing puffing up to any extent. Lately, the scenario has changed largely and the Courts are insisting on the facts in such type of advertisement.

Conclusion

Effective advertising can change the way the world sees a product or a service. If done honestly and objectively, there is no better way to achieve this than comparative advertising. However, considering the cut-throat competition in the market, it becomes very necessary to have an edge over the competitors. With globalization, enterprises nowadays have a presence in several jurisdictions. In these circumstances, use of the competitor's trademark must be honest and in accordance to established trade practices. Advertisers must ensure that they are not indulging in puffing up their own goods or services without any supporting evidence to corroborate their claims.

Advertisers need to keep in mind that via advertisements, they not only promote their products, but also educate the consumers in the long run. Also, the authorities dealing with such cases of comparative advertising must give importance to various aspects

like mode of advertisement, content of advertisement and perspective of consumers. In India, the jurisprudence about comparative advertising has developed significantly. Many years of debate and series of judicial pronouncements have now brought much-needed clarity to the field of comparative advertising. To sum up, the Act allows comparative advertising or in other words comparative advertising by means of using third party trademark. An ideal comparative advertisement is that, which on one hand, while enhancing market performance of the product also ensures protection of consumer interests and the related intellectual property rights.

References

- 1 Gilson J, Trademark protection & practice 1-1'1.03 (Mathew Bender), Cited in The antitrust model of extra territorial trademark jurisdiction; Analysis and predictions after F. Hoffmann –la Roche, *Emory International Law review*, 20 (2013) 651-698.
- 2 Section 29(8) in The Trade Marks Act, 1999: A registered trade mark is infringed by any advertising of that trade mark if such advertising—(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or (b) is detrimental to its distinctive character; or (c) is against the reputation of the trade mark.
- 3 India has one of the fastest growing service sectors in the world with annual growth rate of above 9% since 2001, which contributed to 57% of GDP in 2012-13. <http://www.thehindu.com/business/budget/india-has-second-fastest-growing-services-sector/article6193500.ece>, (accessed on 03 June 2017).
- 4 Black's Law Dictionary (6th Edition 1990), also quoted in *Godrej Sara Lee Ltd. v Reckitt Benckiser (I) Ltd.*, 2006 (32) PTC 307 Del.
- 5 *Colgate Palmolive Company v Anchor Health and Beauty Care Pvt. Ltd.*, 2003 (27) PTC 478 Del.
- 6 Article 2(1) and 2(2a) of the Advertising Directive 2006/114/EC of the European Parliament and of the Council.
- 7 *Tata Press Ltd. v Mahanagar Telephone Nigam Ltd.*, (1995) 5 SCC 139.
- 8 This Act is not in force in India currently as it was repealed and was replaced by Competition Act 2002 with effect from 1 September 2002.
- 9 Section 36A (1) (x) defines an unfair trade practice. It states that "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provisions of any services, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely :- (1) the practice of making any statement, whether orally or in writing or by visible representation (2) gives false or misleading facts disparaging the goods, services or trade of another person."
- 10 http://www.cci.gov.in/sites/default/files/advocacy_booklet_document/FAQ.pdf (accessed on 10 June 2017).
- 11 Section 2 (zb) Trade Marks Act, 1999.
- 12 Section 29 (8), Trade Marks Act, 1999.
- 13 Section 30 (1), Trade Marks Act, 1999.
- 14 *Holterhoff v Freiesleben*, (2002) F.S.R.23, 362.

- 15 *BMW v Deenik*, (1999) All E.R.(EC) 235.
 16 <https://ascionline.org/index.php> (accessed on 10 June 2017).
 17 http://www.cablequest.org/pdfs/i_b/PROGRAMME-ADVT-CODE.pdf (accessed on 25 May 2017).
 18 https://ascionline.org/images/pdf/asci_code2new.pdf (accessed on 10 June 2017) page 2.
 19 <https://ascionline.org/index.php/how-to-complaint.html> (accessed on 10 June 2017).
 20 <https://ascionline.org/index.php/process-of-complaints.html> (accessed on 10 June 2017).
 21 <https://www.ascionline.org/index.php/track-ur-complaint.html> (accessed on 10 June 2017).
 22 <http://www.moneylife.in/article/asci-bans-82-ads-including-loreal-cavinkare-vicco-complan-cnbc-india-today-flipkart-bsnl-uber-snapdeal-honda-in-june/43573.html> (accessed on 25 May 2017).
 23 Datta A, Comparative advertising in India-puff under scrutiny, <http://www.worldtrademarkreview.com/Issues/Article.aspx?g=32a85852-a5d2-4c65-8216-619aaf642086> (accessed on 20 May 2017).
 24 *Reckitt & Colman of India Ltd. v Kiwi T.T.K. Ltd.*, 63 (1996) D.L.T. 19.
 25 *Dabur India Ltd. v Emami Ltd.*, 2004 (29) PTC 1 and *Dabur India Ltd. v Wipro Ltd.* CS(OS) No.18 of 2006, decided on 27th March 2006 (Delhi High Court).
 26 2003 (27) PTC 305 Del.
 27 2005(31) PTC 1 Del.
 28 CS (OS) No.18 of 2006, decided on 27 March 2006 (Delhi High Court).
 29 AIR 2005 Del 102.
 30 Panjrath N & Singh K, Comparative advertising- A brief overview, *Manupatra Intellectual Property Report*, A-208.
 31 *Godrej Sara Lee Ltd v. Reckitt Benckiser (I) Ltd.*, 2006 (32) PTC 307.
 32 Nair M S, India: Roads ahead - Comparative advertisement, <http://www.mondaq.com/india/x/39572/Roads+Ahead+Comparative+Advertisement> (accessed on 10 June 2017).
 33 7 (2008) M.L.J. 1119.
 34 *Reckitt & Colman of India Limited v M.P. Ramachandran and Anr.*, 1999 PTC (19) 741 (Cal.).
 35 2006 (32) PTC 307.
 36 *Dabur India Ltd. v M/S Colortek Meghalaya Pvt. Ltd.*; 2010 (42) PTC 88 (Del).
 37 AIR 2005 Del 102.
 38 1995 AIR 2438, 1995 SCC (5) 139.
 39 2008 (38) PTC 37 (mad) para 29.
 40 2012 (52) PTC 260 (Bom).
 41 CS (OS) 107/2015, disposed off on 20 November 2015.
 42 As per Section 29(8) and 30(1) of the Act. The court held that this is an objective test which depends on audience who are reasonable. Honesty must be evaluated *vis-a-vis* kind of goods or services in question. In this regard, the Court used an example to elucidate: an advertisement for second hand cars may not be honest if used to encourage the use of 'powerful medicines'.
 43 In Notice of Motion (L) No. 690 of 2017 in Suit (L) no. 204 of 2017, Judgment pronounced on 16 June 2017.
 44 *White v Meli*; 1895 AC 154.
 45 *De Beers Abrasive Products Ltd. and Ors. v International General Electric Co. of New York*; 1975 (2) ALL ER 599.
 46 *Cable & Wireless PLC v British Telecommunications*; 1998 F.S.R. 383.
 47 *British Airways PLC v Ryanair Ltd.*, 2001 F.S.R. 32; *O2 Holdings Ltd. & Ors. v Hutchison 3G Ltd.*, [2006] E.W.H.C. 534 (Ch). 12. [2006] E.W.H.C. 534 (Ch).
 48 <http://www.thehindubusinessline.com/2002/02/28/stories/2002022800191300.htm> (accessed on 05 June 2017).
 49 <http://theshashwat.blogspot.com/2006/04/cola-wars-in-india.html> (accessed on 7 February 2015); In one of the advertisements, Hindustan Coca Cola and others endorse their product with the help of a commercial wherein the lead actor asks a child which is his favorite drink. He mutters the word "Pepsi", which can be seen from his lip movement though the same is muted. The lead actor thereafter asks the boy to taste two drinks in two different bottles covered with lids and the question asked by the lead actor is that "Bacchon Ko Konsi pasand aayegi?" After taste the boy points out to one drink and says that that drink would be liked by the children because it is sweet. In his words, he says. "Who meethi hain, Bacchon ko meethi cheese pasand hai". He preferred the other drink which according to him tastes strong and that grown-up people would prefer the same. And later the stronger one came out be "Thumps Up", and one which is sweet, word "Pappi" is written on the bottle with a globe device and the colour that of the "Pepsi". The boy feels embarrassed about the fact that he chose "Pepsi", which he himself felt was a children's' drink.
 50 Barooah S P & Bhattacharya S, Comparative advertisements: Balancing consumer interest *vis-à-vis* IPR infringement' <https://www.nalsar.ac.in/IJIP/Files/Archives/Volume%202/7.pdf> (accessed on 10 June 2017).