

COMPARATIVE ADVERTISEMENT IN INDIA, UK & US AND PRODUCT DISPARAGEMENT

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Abstract

This paper seeks to dwell into various dimensions of comparative advertisement, broadly divided into five parts (i) the concept of comparative advertisement, (ii) analysis of various laws, which seek to regulate comparative advertisement in India, US & UK (iii) the interface between comparative advertisement and product disparagement, (iv) leading judicial pronouncements and (v) conclusion.

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Introduction

In today's fast paced world, consumers have access to a wide range of products and brands for virtually everything. In such a scenario, advertisements play a vital role in determining a product's future prospect. According to the oxford dictionary¹, an Advertisement is "a form of public notice or an announcement of sorts in a public medium, aimed at promoting a product, service, or event".

It is pertinent to note that by utilizing all forms of media, influence of advertisements in our daily lives has transcended both geographical and social boundaries. Hence the power possessed by an advertisement to encourage, entice and at the same time dissuade people, today, is as never before. In this growing marketplace which is becoming increasingly competitive, it becomes all the more necessary to understand the law relating to comparative advertising, how it influences various parties, i.e. consumers, proprietary right holders, competitors and the general public. To make a product more attractive the producers generally adopt various ways and techniques to make and market their products more effectively than others, to sway the consumers. The problem arises when some modus-operandi/methods however, border between the realm of fair and unfair trade practices. One such way is Comparative Advertising.

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I. COMPARATIVE ADVERTISEMENT – MEANING AND SCOPE

Comparative advertising is a unique form of advertising, wherein there is a comparison of goods or services of a trader/undertaking with that of the other². The underlying purpose of comparative advertisement is to emphasize and bring to the fore the advantages of the products or services offered by an advertiser as compared to those of competitors. Comparative advertising is a commonly used form of commercial advertising in many countries. To show the advertiser's products in a favorable light, comparative advertisements more often than not emphasize on differences in things such as value, price, durability or quality. The underlying aim of such type of comparison is to aim of comparative advertising is to objectively inform the customer about the available range of products. Comparative advertisement intends to promote market transparency, keeping down prices and improving products and services by stimulating healthy competition. Therefore it is imperative to protect and shield the interests of such competitors by not allowing such comparative advertising to cause confusion, mislead, or discredit a competitor in the market.

A. Various types of Comparative Advertisement:

Comparative advertisement generally is of 2 types – Implicit and Explicit

1. Implicit Comparative Advertisement

Those advertisements in which a direct reference of the competitor's product has not been made and is merely a reference which is clear to a person of average intelligence is termed as implicit comparative advertisement.

2. Explicit Comparative Advertisement

Those advertisements in which a specific comparison has been with the competitors product along with a claim which states that the advertised product is superior to that of competitor's product in any way whatsoever can be termed as an explicit comparative advertisement.³

Puffery which is a form of exaggerated praise of one's own product or service is generally allowed both in the implicit as well as explicit form of comparative advertising. However, problem arises when the comparison exceeds certain threshold and thereby becomes in the nature of vilification of another's product. Such comparison then amounts to product disparagement. As a result of such disparagement, the advertiser/producer may also be liable for infringement of mark if explicit comparison is made and such comparison is not within the limits allowed for.⁴ The precise scope of comparative advertising varies from jurisdiction to jurisdiction, and therefore the question of whether an advertisement amounts to disparagement or not, is a question of domestic law.⁵

Often in comparative advertising, references and suggestions made to competitors' products or services through their trademarks. This raises several concerns. In principle, there is an exclusive right of the holder of a trademark to use his trademark to identify his products or services. However in the case of comparative advertising, the use by a trader of the competitor's mark(s) to identify the competing goods or services might result in harm to the goodwill and reputation of the trademark's actual owner.

Comparative advertising, when exploited in an economical context can amount to illegality on two grounds namely unlawful competition at common law or infringement of a registered trademark. Use of anybody else's trademark in any advertisement which affects the reputation and goodwill of the trademark becomes an illegal act.

B. Disparagement

Black's Law Dictionary states that "disparagement" is an act to connect unequally or to dishonor someone or something by comparison. Disparagement is, thus, a false or deleterious statement /comment that discredits, belittles from the reputation of another's product or business.⁶

C. When does Comparative Advertising amount to Disparagement?

Comparative advertising itself per se may not be illegal however if one uses someone else's mark in his advertisement, the same can amount to disparagement if such advertisement affects the reputation and goodwill of the mark. Disparagement of goods per se is not defined in the statute, however the same can be understood as false and misleading statement about a rival's goods made with the purpose of swaying consumers not to buy the product or service. Such acts can therefore attract serious legal issues.

In the case of *Reckitt & Coleman of India v. Kiwi T.T.K.*⁸ pronounced by Delhi High Court, the court explained the concept of disparagement in the context of comparative advertising, by stating that a manufacturer is permitted to state that his goods or services are the best so as to puff up his goods. This puffing up will not give a cause of action to the other manufacturers selling similar goods or services, to institute a case as there is no disparagement or defamation of the goods of the manufacturer. On the other hand, however, a manufacturer of products is not entitled to say or impute that his rival's goods or services are bad or of low standard as to puff up and promote and market his goods or services.

It is important to note that in India since there are no specific legislative mechanisms to handle and regulate comparative advertising in India, for that reason precedents set by courts by way of judicial pronouncements are therefore followed while adjudging disputes. Although the Courts usually rule in favour of one's liberty to advertise as to the manner they please, however the courts at the same time do not hesitate in granting injunctions and imposing exemplary damages against infringers.⁹

II. Analysis Of Laws Regulating Comparative Advertisement In India, UK &USA

INDIA-

A. Monopolies and Restrictive Trade Practices Act, 1984 (MRTP Act) and the Trade Marks Act, 1999

1. In India although no statute clearly defines comparative advertising, the MRTP Act (Monopolies and Restrictive Trade Practices Act, 1984) and the Trade Marks Act, 1999 work in sync to provide the basic structure that govern it. The Trade Marks Act, 1999 has incorporated provisions related to this concept under Sections 29(8) and 30(1). Section 36A of the MRTP Act lists several methods or actions to be an 'unfair trade practice' as any unfair or deceptive practice which gives misleading facts leading to disparagement of the goods, services or trade of another person. Therefore, subject to certain limitations and restraints to unfair trade practises, according to statutory provisions in India, lawful comparative advertising is permissible.

2. The Trade Marks Act, 1999 attempts to balance two competing interests viz. the rights of registered trade mark owners and a conflicting interest of the consumer in informative comparative advertising.

3. Section 29(8) of the Trade Marks Act, 1999 lays down that the right of a holder of a registered trademark is infringed by any advertising of that mark, if such advertising takes an unfair advantage and is also contrary to established honest practices in industrial or commercial matters, thereby being detrimental to its distinctive character of the mark, or being detrimental to the reputation and goodwill of the mark.

4. Therefore, comparative advertising is legal and permissible to the extent where it does not hamper or disparage the goodwill and reputation of a rival's trademark and is in accordance with the honest practices in commercial and industrial matters. While advertising, a comparison of goods in terms of advantages can be made by a person over the goods of his competitor, however one cannot say that his competitor's goods are of poor quality as this may lead to disparagement of goods of the other. One can use any false/ misleading statement while promoting one's goods or services.¹⁰

B. Advertising Standards Council of India

1. In 1985, since there was no proper statutory authority for regulating advertisement in India, the industry itself developed a detailed model for self regulation, which came to called the Advertising Standards Council of India ('ASCI'). Although it was a non-statutory tribunal, however it was able to lay the basic foundation for regulation of comparative advertising under its 'ASCI Code for Self Regulation in Advertising (2007)'. Under the code it is has been stated that that advertisements which contain comparisons with competing/rival manufacturers and sellers are permissible and allowed in the interests

of energetic competition and free distribution of information, subject to the following requirements or prerequisites being satisfied:

- (a) It should be clear what feature of the advertiser's product or service is being compared with what feature of the competitor's/rival's product.
- (b) The subject matter of the comparison should not be chosen in such a way so as to bestow an artificial leverage upon the advertiser or so as to put forward that a better bargain is presented than is truly the case.
- (c) That the comparisons between the two advertisements are factual, true and capable of authentication.
- (d) That there is no possibility or likelihood of the consumer being confused or misled as a consequence of the comparison, the product being advertised or compared.
- (e) The advertisement should not unfairly disparage or discredit other products or services, advertisements or advertisers, directly or by insinuation.¹¹

UNITED KINGDOM -

A. UK Trade Marks Act, 1994

1. UK has a fairly liberal regime which governs and controls comparative advertising. The European Standing Committee of the Parliament of UK in November 1995 had debated the nuances of comparative advertising and stated that the government of UK viewed this type of advertising as a legitimate and an effective marketing tool which stimulates competition between competitors and informs the consumers'. It is pertinent to note that Section 11(2), permits only fair comparisons of goods, for example, as to on indications of quality or price. The said section also permits only a fair comparison to be done between the trade mark owner's goods and those of the defendant, provided the comparison is honest one and is part of the genuine indication of quality or price". If these conditions are met then the comparison is within the provision.¹² The 1994 Act does not require the courts to enforce a more puritanical standard than the general public would expect from advertising. A significantly misleading advertisement, for example, is not considered honest for the purposes of either Section 10(6) or 11(2). To this end, the advertisement must always be considered as a whole.¹³

B. Misleading and Comparative Advertising Directive

The British Code of Advertising permits comparative advertising so long as the comparisons comply with the terms of MCAD (Misleading and Comparative Advertising Directive)¹⁴. Conformity with these requirements is assessed according to the advertisement's probable impact, taken as a whole and in context. The impact that an advertisement has and will depend on the audience, the medium, the nature of the product, and any additional material distributed to consumers at the time. Before releasing an advertisement, advertisers must have documentary evidence to prove all claims, whether direct or implied, that are capable of being objectively substantiated. The adequacy of this evidence will be judged against whether it supports both the detailed claims and the overall impression created by the advertisement.¹⁵

C. Monoley Committee on Consumer Protection, 1962

The Monoley Committee on Consumer Protection, 1962 ("MCCP") recommended for the institution of an independent regulatory for the industry which was the first self regulatory approach made following a scornful accusation by the MCCP. Pursuant to this, The Advertising Standards Authority (ASA) was instituted with the objective of ensuring that the advertisements were 'legal, decent, honest and truthful'.¹⁶

A COMPARISON BETWEEN INDIA AND UK -

The major difference between Advertising Standards Authority (ASA) and Advertising Standards Council of India (ASCI) is that the former has the authority to enforce its directives on limits on comparative advertisement, while the latter cannot do so. Further, ASA has the power to refer persistent cases of violations to the Director General of Fair Trading (DGFT), who can further obtain a statutory injunction against such advertisement(s). The current rules on comparative advertising are regulated by a series of EU Directives.¹⁷

UNITED STATES OF AMERICA -

Comparative advertising in the USA is subject to regulation and control through a combination of federal, state laws, local laws as well as, self-regulatory codes of conduct.

A. Treatment of comparative advertising by FTC and NAD

In the US, comparative advertising does not fall under the ambit of First Amendment of the American constitution and hence any sort of a false and deceptive advertising may be banned. The Federal Trade Commission (FTC) and the National Advertising Division (NAD) of the Council of Better Business Bureau are the main regulatory authorities which deal with comparative advertising including taking up such of claims. The primary objective of the FTC is to shield consumers from deceptive or unfair market practices and promote healthy competition between competitors. It recognizes that the law of advertising allows for subjective statement of opinion, with the assumption being that ordinary consumers do not take such statements seriously.¹⁸ In the case of Jay Norris Inc., an advertisement was held to be a deception when it claimed that an antenna was an 'electronic miracle'. The FTC held it to be an exaggerated claim that could lead consumers to believe that the antenna was generally superior. However, FTC offers no significant relief to a competitor who's reputation might have been hampered due to comparative advertising.

In the case of Tommy Hilfiger Licensing Inc. vs. Nature Labs LLC [2002], Nature Labs, which was a shop in the business of selling pet perfumery, was using the mark "Timmy Holedigger" as its trademark as well as the slogan "If you like Tommy Hilfiger, your pet will love Timmy Holedigger". As a result, a lawsuit was filed against Nature Labs by Tommy Hilfiger, which is one of the best-recognized U.S. fashion labels, for, garments, accessories etc, for trademark infringement, trademark dilution, unfair competition and commercial fraud. The court in this case held that the use of a mark similar to that of plaintiff's mark viz.

Tommy Hilfiger by the defendant is merely a fair parody, and a kind of "freedom of speech" protected under the First Amendment of the United States Constitution. The result of such use by the defendant would be that the consumers were more likely to laugh at the humor in the parody than be confused about the origin of the goods. Such comparison by the defendant did not depreciate or disparage the plaintiff's goods in any manner. Therefore, the court dismissed all of the plaintiff's claims.

B. Lanham Act

Another major law, which deals with comparative advertising is the Lanham Act. Section 43(a) states that:

"Section 43(a): False designations of origin, false descriptions, and dilution forbidden-

(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act."

Under the aforesaid section, an injunctive relief can be obtained by the plaintiff and also recovery can be made of any monetary damages incurred in the event of an irreparable harm done to him is proved.¹⁹

Under this Act, liability arises if an advertisement is either:

- If a claim is literally false or patently false the courts may bar the claim without referring to its effect on the buying public. The circumstances in which the court will consider a comparative advertisement to be literally false wherein:
 - the claim itself is factually false; or
 - the resultant implication of its claim or assertion is false (viz. if the advertisement which has been challenged can be interpreted in only one way).
- When it is alleged that the challenged advertisement is likely to deceive the public because of an implied message, the burden of proof lies on the plaintiff to prove that the claim is false and that the consumers actually viewed the claim (which is usually accomplished by conducting a public survey).²⁰

A COMPARISON BETWEEN INDIA AND USA

After going through the laws of both U.S and India we can state that the present laws and regulations in India are strong and the only need of the hour is that the balance should be maintained to protect the economy in the sense that if a investor has invested a huge sum of money in a business and advertises his product or services revealing the truth of the other competitor products (as long there is no disparagement) then he should be allowed to proceed with his advertisement. There needs to be a strong law, adequate enforcement and a quick dispute settlement mechanism which is needed to sustain competition. It is pertinent to mention that the doctrine of fair use as applied in US ought to be applied in India in order to allow a competitor to use the comparative advertisement without any intention to harm the original and not to misinform the consumers.

III. INTERFACE BETWEEN COMPARATIVE ADVERTISEMENT AND PRODUCT DISPARAGEMENT

There are several opinions and views regarding the interface between comparative advertising and product disparagement. One outlook has been that the two being economic in nature and in furtherance of marketing of products, they should be restricted to the market to ensure that the same remains free. The other outlook seems to be one where a company can praise and puff up its products as much as it wants but without defaming, discrediting or disparaging the rival products. Therefore, the courts bar and discourage any sort of defamation or discrediting of any specific product of the competitor whereas a general and fair comparison of competitors products in the market has been allowed time and again by courts.²¹

According to The New International Webster's Comprehensive Dictionary, disparagement means, 'to speak of slightly, undervalue, to bring discredit or dishonor upon, the act of depreciating, 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'. The Concise Oxford Dictionary defines disparage as, 'to bring dis-credit on, slightly of and depreciate'.

To decide the question whether there is disparagement of a product or not, we have to keep the following factors in mind namely:-

- (1) Underling Intent of commercial
- (2) Manner in which the commercial is presented
- (3) Message that is sought to be conveyed by the commercial.²²

Out of the above three, "manner in which the commercial is presented", is very important. If the manner is condemning or ridiculing the product of the competitor then it amounts to disparagement. However, if the manner is only to show one's product superior or better without derogating or disparaging the other's product then that is not actionable. Mere puffing up of goods is not actionable. A competitor can say or claim that his goods are the best or better than all other products available in the market, however, by making such a comparison the competitor cannot defame the goods of a rival, nor can call it bad or inferior.

Also, another view seems to evolve where courts have become more vigilant upon advertisements that 'puff' about their products and the reasoning provided by followers of this view is that in a society where illiteracy is common, such puffing would be against the best interests of the consumers. It is true that liberal markets and fierce competition puts companies under great pressure to advertise their products

heavily to ensure success of a product but it would be wrong to say that to further this end, product disparagement could be kept out of the ambit of interference into markets by courts.

IV. JUDICIAL PRONOUNCEMENTS

- Reckitt & Colman of India Ltd. vs M.P. Ramachandran and Anr.²³

In the said judgment the Ld Single Judge of Calcutta High Court observed that a tradesman is entitled to puff up his own goods or services but in doing so cannot defame or disparage the goods or services of the competitor. This judgment also held that if any product claims to be based on a new technology or invention, such a trader can positively say that such product consisting of new technology that is superior to the existing technology but at the same time, cannot say that the product which uses the old technology is bad, harmful or of inferior quality.

- Reckitt & Colman v. Kiwi T.T.K. Ltd²⁴

The Reckitt & Colman of India Ltd. v. M.P. Ramachandran and Anr., judgment and observations was cited with the approval in Reckitt & Colman v. Kiwi T.T.K. Ltd. case. In the said case the Delhi High Court laid down five principles to determine in cases of comparative advertising, that whether the party is entitled to an injunction:

1. That a tradesman is permitted to declare his goods or service to be the best in the world, even though the said declaration is not true.
2. That the tradesman can also claim that his goods or services are better than his rival's, even though such statement is not true.
3. That the tradesman for the purpose of claiming that his goods or services are the best in the world or are better than his rival's, he can even compare the advantages of his products over the products of others.
4. That the tradesman, however, cannot while claiming his goods to be superior or better than his rivals', say that his rivals' goods are bad or inferior. If he says so, he slanders and disparages the goods of his rivals. In other words he discredits his rivals and their goods or services, which is not permissible.
5. If there is no defamation or disparagement to the goods or services of the manufacturer, no action lies, but if there is such defamation or disparagement, an action lies and if an action lies for recovery of damages, then the Court is also competent to grant an order of injunction restraining repetition of such defamation or disparagement.

- The decision in *Godrej Sara Lee Ltd. v. Reckitt Benckiser (I) Ltd.*²⁵ reflected of what the courts in India regarded honest comparative advertising to mean. In this case, the defendant's product 'Mortein' was advertised, and was meant to kill both roaches and mosquitoes which aspect was highlighted in the commercial. The plaintiff claimed that the commercial of the defendant's disparaged their product 'Hit', which also had two separate versions for killing roaches and mosquitoes. The court held that the advertiser has a right to boast or puff up the technological superiority of his product in comparison with product of the competitor. Telling the consumer that he could use one single product to kill two different species of insects, without undermining the plaintiff's products by making any unfavourable remarks, by no stretch of imagination amounted to disparaging the product of the plaintiff.

- *Pepsi Co. Inc. and Ors. v. Hindustan Coca Cola Ltd. and Anr.*²⁶

In this case, Pepsi filed a suit against Coca-Cola for wrongful use of their Trademark in a TV commercial, wherein an actor asks a kid to his favorite drink for which the kid replies, by saying that he likes Pepsi, as obvious from his lip movement as it was muted. Then the actor asks the kid to taste the two samples of drinks after hiding their identity and questions the kid as to which one the kid likes? The kid points to one of the two drinks, and says that since it is sweeter the children would prefer it, and says that he does not like that drink. He likes the taste of the other drink as it is stronger and the same will be consumed by grownups. After the lids of both the bottles are opened, it is revealed that the drink which the kid likes, was "Thumps-Up" while the other had PAPPY written on the bottle, which deceptively resembled PEPSI. The kid feels embarrassed as he had earlier liked the Pepsi taste. In some other advertisements the commercials read the slogan as "Wrong choice baby", and that the "Thumbs Up" is a right choice, and "KyoDilMaange No More" which amounts to damaging the repute of Pepsi brand.

While discussing the aspect of comparative advertising, the court held that one can boast about superiority of his products and while doing so can compare the advantage of his product with those available in the market. Also while doing so one can boast about the relative advantage of one's product over the other and also state and claim that the technology of the products that are currently available in the market have become old and obsolete. One can further state that the new technology available and used by one is way more superior to the known technology, but one cannot say that the known technology or the product using that technology is inferior or harmful. The court held that in the garb of puffing up its product and brand THUMBS UP, prima facie the respondents tried to represent the product of the appellant as inferior, which is not permissible.²⁷

On the other hand, the court declined the appellant's contention that comparative advertising between two marks is ipso facto infringement. The court held that Coca-Cola while representing their product THUMBS UP in India have neither used the trademarks of Pepsi-Co nor in any manner suggested a connection of the appellant's trademark with respondent's goods. This therefore did not amount to infringement of the trademarks of Pepsi-Co.²⁸

- *Dabur India Ltd. v. M/S Colortek Meghalaya Pvt. Ltd.*²⁹

In this case certain principles to ascertain the tenor of implied disparagement in comparative advertising were laid down. The appellant, manufactured the well known mosquito repellent creams, viz. 'Odomos'

and 'Odomos Naturals.' The respondent also manufacturing mosquito repellent cream under the brand name 'Good Knight Naturals.' The respondent TV telecast of the advertisement of 'Good Knight Naturals', was contended by the appellant as being disparaging for its products.. The question before the court was whether the TV telecast by the respondent, infact disparaged in an implied manner the products of the appellant, and if so, whether as a result of such telecast the appellant was entitled to an injunction.

The Court observed that a tradesman can always represent his products in a manner that gives him additional purchasers than what he would normally had. This leeway, however, in no way implies any permission for distortion or misrepresentation. This leeway only grants a permissible assertion. To demonstrate this argument, the Court placed reliance on the principle of, "simplex commendation on obligat", that means means that simple commendation can only be regarded as a mere invitation to a customer, without any obligation as regards the quality of goods. Therefore, each tradesman has the right to naturally try and assert that his products are of superlative quality.³⁰

V. CONCLUSION

An analysis of the foregoing laws and codes forged for regulation of comparative advertising, it is apparent that there is an absence of dedicated and a consolidated legislation which regulates the same in India. For judging the basis of comparative advertisement and disparagement claims in India Common Law principles are still used. From recent judicial decisions on the subject, the conclusion, which we can draw, is that the courts, while allowing comparison of products by tradesmen in India, have strictly upheld and maintained that such comparisons should not portray the competitor's or rival's products or services in a negative light. Hence, what needs to be remembered and taken into account is the underlying intent of the commercial and whether it is trying to denigrate or disparage the competitor's product in such a way that the reputation of the competitor is being negatively hampered or affected.

Moreover, in the absence of any specific legislation to deal with the limits of comparative advertisement, another predicament, that arises, is the diverse and varied interpretations of Indian Courts, which creates more confusion in the minds of public instead of bringing clarity.

It may also be noted that key terminologies under the concept of comparative advertisement, like "disparagement" and "honest practices" are not defined in any legislation, and therefore the judicial interpretations or the dictionary meaning have to be used in ascertaining the meaning of these terminologies. 'Unfair trade practice' has been defined u/s 36A of Monopolies and Restrictive Trade Practices, 1969 that stands repealed now. Another statute, Consumer Protection Act, 1986 provides protection against unfair trade practice but in the cases of 'comparative advertising' the parties are firms (whose products are endorsed by the advertisements), which would not come in the ambit of 'consumers' to approach the consumer forum.

Therefore a viable solution is to develop a comprehensive and detailed system for regulation of comparative advertisement which would enable to adopt the model as has been evolved in Britain with the norms which may be prescribed by the advertising body whose directives are legally enforceable.

ENDNOTES

- ¹ <http://www.oxforddictionaries.com/definition/english/advertisement>, last visited on 17th December 2016.
- ² Bently, Lionel and Sherman, Brad, *Intellectual Property Law*, Third edition, Oxford University Press, 2009, p.937.
- ³ Article on "Comparative Advertising as a Competitive Tool", written by Kaylene C. Williams and Robert A. Page, Jr.; http://www.na-businesspress.com/JMDC/WilliamsKC_Web7_4_.pdf, last visited on 17th December, 2015.
- ⁴ Supra Note 3.
- ⁵ Supra Note 3.
- ⁶ <http://thelawdictionary.org/>, last visited on 16th December, 2015.
- ⁷ Article on "India: Comparative Advertising: How Far Can One Go?" written by Zoya Nafis: <http://www.mondaq.com/india/x/371760/Trademark/Comparative+Advertising+How+Far+Can+One+Go>, last visited on 17th December 2015.
- ⁸ 63 (1996) DLT 29.
- ⁹ Supra Note 10.
- ¹⁰ Supra Note 10.
- ¹¹ Article on "Comparative Advertising in India: Evolving a Regulatory Framework" written by Parth Gokhale and Shriyani Datta: <http://nujlawreview.org/wp-content/uploads/2015/02/parth-and-sheryani.pdf>, last visited on 17th December 2015.
- ¹² *British Sugar v James Robertson* [1996] RPC 281.
- ¹³ *Cable & Wireless Plc v British Telecommunications Plc* [1998] FSR 383.
- ¹⁴ Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006L0114>, last visited on 17th December, 2015.
- ¹⁵ Supra Note 3.
- ¹⁶ <https://www.asa.org.uk/>, last visited on 17th December, 2016.
- ¹⁷ Article on Comparative "Advertising and Competition Policy" written by Francesca Barigozzi and Martin Peitz: <http://www2.dse.unibo.it/wp/524.pdf>, last visited on 17th December 2016.
- ¹⁸ Website of Federal Trade Commission: <https://www.ftc.gov/about-ftc>, last visited on 17th December 2016.
- ¹⁹ Article on "The Law of Comparative Advertising in the United States", written by John E. Villafranco: http://www.kelleydrye.com/publications/articles/1335/res/id=Files/index=0/Villafranco_Law%20of%20Comparative%20Advertising%20in%20the%20US_010210.pdf, last visited on 17th December, 2015.
- ²⁰ Supra Note 25.
- ²¹ *Dabur India Ltd v Colgate Palmolive India Ltd* IA No. 5445/2004 in CS(OS) No. 914/2004 decided on 9th September 2004 (Delhi High Court) wherein the Court found that, although the advertisement of the defendant made a reference to the class of goods only, namely, 'red tooth powder', and did not specially referred to the plaintiff's product, still the plaintiff would be entitled to get an injunction against the defendant, as the plaintiff held 85% of the share of the market, in that product.
- ²² Online article on "Use of Trademark In Comparative Advertising: Situation In India", <http://www.legalserviceindia.com/articles/tadv.htm>, last visited on December 18, 2015
- ²³ 1996 P.T.C. 193 T 399.
- ²⁴ Supra Note 8.
- ²⁵ 2006 (32) P.T.C. 307.
- ²⁶ 2001 (21) P.T.C. 722

²⁷ Article on "Comparative Advertising and Disparagement" written by Chander M. Lal: <http://www.inta.org/INTABulletin/Pages/ComparativeAdvertisingandDisparagement.aspx>, last visited on 17th December, 2015.

²⁸ Supra Note 30.

²⁹ 2010 (42) PTC 88

³⁰ Case Law: <http://indiankanoon.org/doc/82383482/>, last visited on 17th December 2016.
