

Comparative advertising: future indian perspective



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INTRODUCTION

Comparative advertising is a form of advertising where one party advertises its goods or services by comparing them with that of its competitors.

Generally the competitor is the market leader in that product category.

With the market becoming overcrowded with a large no. of products, all the brands are looking for ways to attract the customers attention and comparative advertising is one such way they have discovered. Although comparative advertising was started long ago, yet it is only in past few years that it has become extremely popular way of advertising especially in sectors like FMCG, automobiles etc.

Some popular examples of comparative advertising include Apple's ' I AM A PC' ad, Pepsi's Blind Taste Test act and the recent ' Rin and Tide Naturals' controversy.

This form of advertising is aggressive and should is different from parody advertisements where a fictional product is advertisements with the aim of poking fun at other advertisements.

Types of Comparative advertising

Explicit - In this case a product is directly compared to its competitor by taking the name of competitor.

Example:

The Famous Pepsi vs. Coke advertisement where Pepsi highlighted its superiority by saying that most people preferred the taste of Pepsi over coke in a blind taste test.

Implicit – In this case the competing brand is not named explicitly, rather they are referred to as leading brands.

Example:

Pepsodent in one of its advertisements said it is 102 % better than the leading toothpaste, implicitly referring to Colgate.

Advertisements can have two purposes:

To inform the product's advantages and strengths over competitors.

The emphasis is on highlighting relative benefits of own product or services rather than showing the defects of the competitors.

Example: When Johnson and Johnson launched Whisper, they directly publicized the new features in whisper which were not present in the then popular brand ' Carefree' without ever naming carefree.

To show superiority of one's product and showing that the competitors are inferior.

It is in this category that the legal issues arise especially when the claims made are not backed by proper proof or testing.

Example: During the recent Rin vs. Tide controversy Rin openly declared that its product gave more whiteness than Tide Naturals.

LAWS ABOUT COMPARITIVE ADVERTISING IN INDIA

Comparative advertising is governed by different laws in different countries. While it is permissible in India and US provided it follows some guidelines, it is banned in countries like Europe and Malaysia.

Comparative advertising has to comply with following legal and regulatory provisions within India:

1. 2. 1 CONSTITUTIONAL PROVISIONS

The constitution of India has given certain rights regarding freedom of speech

However, article 19(2) also puts limits on the freedom of speech and expression in case they cause defamation or incitement to an offence.

The question which arises is that whether the advertisements as ‘ commercial speech’ can be protected under freedom of speech under article 19(1)(a).

The Supreme Court has ruled that ‘ commercial speech is a part of freedom of expression guaranteed under article 19(1)(a) of constitution since it creates awareness amongst the general public. However it is subjected to article 19(2).

1. 2. 2 Monopoly and Restrictive Trade Practices (MRTP) ACT

The section 36A of MRTP act lists several practices as ' Unfair trade practices'. Although this act has been repealed, its provisions continue to stand.

The most important amongst these practices is

Giving false or misleading facts disparaging the goods, services or trade of another person.

1. 2. 3 TradeMark Act

Provisions against comparative advertising are also made in under section 29(8) and 30(1) of Trademark act, 1999.

Section 28(a) says that an advertisement infringes upon trademark when it takes unfair advantage or is against the reputation of trademark.

However, section 30(1) says that a registered trademark can be used for identification purpose if it neither takes unfair advantage nor does it detriment repute of the trademark.

1. 2. 4 Advertising Standards Council of India (ASCI) Guidelines

ASCI is a voluntary regulatory body of the advertising world which provides guidelines for ethical advertising and deals with complaints against false misleading advertisements.

The ASCI code of India says that Comparative advertising is allowed if

Advertisements are substantial and based on facts

Advertisements do not mislead consumers.

There should not be any unfair disparaging of competing product

Legal Cases of ‘ Disparagement’ in India

The following cases demonstrate the decisions taken by Indian courts in case of comparative advertising.

1. 3. 1 Cherry Blossom vs. Kiwi

Kiwi liquid wax polish in one of its advertisements showed that while the liquid from its bottle was not dripping, the liquid from another bottle ‘ X’ was dripping. The shape of this bottle ‘ X’ was similar to Cherry Blossom- Kiwi’s competitor- for which they had design registration also. The advertisement thus became a case of disparagement since it could be identified with ‘ Cherry Blossom’.

1. 3. 2 Ujala vs. Regaul case

Ujala in one of its advertisements established its superiority by showing that while it required only 4 drops, the other brands required several spoons. The lady in the advertisement looked down at the bottle of the other brand and said ‘ Chi chi chi’ in disgust.

Later the competing brand Regaul filed a case of disparagement in court.

The court ruled the verdict in favor of Ujala stating that since the bottle of the other brand in the advertisement did not carry any label nor did it have

resemblance to the bottle of any other brand, so it was not a case of disparagement.

The judgment indicated that a case of disparagement can be filed in case of comparative advertising if the other product shown is of an ‘ identifiable’ manufacturer.

1. 3. 3 Colgate vs. Pepsodent

Colgate filed a case against Hindustan Unilever Limited’ when the latter advertised that its product new Pepsodent was ‘ 102 % better than the leading Toothpaste’. Since at that time the market share of Colgate was 59 % and that of Pepsodent was 27%, Colgate was automatically assumed to be the leading toothpaste.

The court ruled in favor of Colgate stating that since Colgate had been the leader in oral care segment for so many years the word toothpaste had become synonymous with its name.

The court ruled that the other product in the advertisement was identifiable with ‘ Colgate’; a claim could be made of the disparagement of Colgate products.

From all these examples it can be concluded that if in comparative advertising the other brand is identifiable and is described as inferior without substantial proof then it becomes a case of disparagement of that product.

PROS AND CONS OF COMPARATIVE ADVERTISING

Since Comparative advertising faces so many legal and regulatory bindings, the question which arises is that why do so many brands use comparative

advertising for promotion. This can be understood better by evaluating the advantages and disadvantages of comparative advertising.

1. 4. 1 Pros

Firstly, the biggest advantage of comparative advertising because of which it is allowed by law is that it helps customers by keeping them informed about a product. It is an important source of information for customers and helps them in rational decision making.

Also, Comparative advertising is an extremely good way to differentiate ones brand from others in a highly competitive market. Comparative advertising helps to highlight the USP's of your product which may not be found in your competitors.

It works extremely well in case the advertising brand is less known.

For example when Captain Cook entered the Indian market it highlighted its product superiority over Tata salt (the biggest salt brand in India) by highlighting that it was a free flowing salt.

Also, when Samsung entered India its punch line said: ' If you are not interested in buying the world's best TV, you can always buy a Sony, Philips or Panasonic'. Since all the other three brands are extremely popular in India, it created enough curiosity about Samsung.

It has been scientifically proven that comparative advertisements have higher recall as compared to non comparative advertisements

1. 4. 2 Cons and Risk

The following are the disadvantages and risks of comparative advertising-

Many times unknown or little known brands may use it by piggy riding on the brand name of their bigger competitor and may gain unfair advantage.

The facts represented in the advertisement may not be true, but till it is proved the advertising company would have received sufficient publicity.

This is based on the belief that no publicity is bad publicity.

Also, when two brands advertise against each other, it adds to the consumer's confusion and the consumers lose faith in such brands.

For example, during the recent comparative advertising between Horlicks and Complain, both claimed that their product is superior. Ultimately, it was the consumers who started doubting the truth behind the claims made by such advertisements.

Many a times it can be used for disparaging the competitor's product and good name.

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Finally, even if the comparative advertising is based in test results, the methodology used in such advertisements may be questionable. This is the main reason why independent labs are preferred for comparative advertising today.

In case of direct comparisons it often becomes confusing to understand which brand is sponsoring the advertisement. This happens mostly in case of <https://assignbuster.com/comparative-advertising-future-indian-perspective/>

Radio and Television being used as a medium for advertising and less in case of using print media.

In case the claim cannot be substantiated, the competition can retaliate with lawsuit.

Recent Trends in Comparative Advertising in India:

Comparative Advertising has been practiced in India since a long time. However more recently the trend has started shifting towards direct comparative advertising.

Direct comparative advertising is the most aggressive form of comparative advertising and it is also the form where disparaging is most common. Three well known cases of comparative advertising are analyzed below

Santro vs. Indica and Icon

Sector – Automobiles

Perhaps this was one of the first high profile direct advertising case in India when Hyundai Santro compared itself to Ford's Icon and Tata's Indica in terms of design, features and technology and published the results in print media.

Through these advertisements Santro conveyed its intrinsic superiority over its competitors Also, it benefited consumers as they got to know the advantages and disadvantages of each of the car which could help them in taking their own decision regarding car purchase.

Later due to MRTPC regulation Hyundai India soon scrapped these advertisements.

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Also, it is interesting to note that Saatchi and Saatchi, the advertising agency of Hyundai India at that time surrendered their Hyundai Account citing the use of comparative advertising by Hyundai as the reason.

Complan vs. Horlicks

Sector – Health Drinks

On Indian television the first high profile case of direct comparative advertising was between GSK's Horlicks and Heinz India's Complan.

Both the companies ran direct comparative advertisements against each other, each claiming that it is better than the other.

Years ago, Complan had indirectly targeted Horlicks by claiming in its 'I am a Complan Boy' advertisement that complain was better than another Brand 'H'. However, now the comparisons between two have become more aggressive and blatant.

Horlicks in one such advertisement attacked Complan saying that while Complan makes a child taller, Horlicks makes him 'Taller, sharper and smarter'.

Horlicks further mocked complain saying that while Complan costed Rs 170, Horlicks was priced at just Rs 132 i. e. Horlicks is cheaper than Complan. Heinz later sued GSK and the advertisement was taken off air.

In case of Horlicks and Complan, the former is the market leader with 60 % market share while latter has just 15 % of the market share.

However, later Complan also came out with print advertisements where Complan was compared to Horlicks on parameters like Main ingredients, Protein content, Protein quality, number of nutrients etc.

Needless to say, with all these advertisements, each showing a different result, the consumers became very confused and irritated. Hence, later both the companies stopped such advertisements.

Rin vs. Tide Naturals

Sector – Detergents

Rin and Tide are the most recent example of direct comparative advertising. On February 28, Rin openly launched an attack against Tide saying that it gave superior whiteness as compared to Tide. Also, HUL played safe with this ad by putting a disclaimer in its advertisement saying ,” Schematic representation of superior whiteness is based on Whiteness Index test of Rin Vs Tide Naturals as tested by Independent lab” . I thus complied with the ASCI guidelines in this advertisement.

P&G later filed a case against HUL in Kolkata and got an interim injunction for the advertisement. HUL on the other hand claimed that it was Tide which had been misleading customers by claiming that its product Tide Naturals had natural ingredients whereas by P&G’s own admission Tide Naturals was a synthetic detergent. A case had been filed by HUL against P&G in the Madras high court before HUL released this controversial advertisement. The Madras court ruled in favor of HUL and directed P&G to remove the advertisement and change its packaging.

Even the Horlicks and Complian attack was not as blatant and direct as Rin and Tide as Horlicks just showed Complian but never took its name. On the other hand, Rin directly said that 'Tide se kahin zyada behtar safedi de Rin'.

At present ASCI has asked HUL to substantiate its claim that it was better than Tide. However, HUL till then had done the damages. Its success can be judged from the fact that the Television Rating Points-(TRP) which this Rin advertisement received within 3 days was comparable to its other advertisements TRP of an entire month.

RESEARCH :

Since Rin vs. Tide Naturals is the first extremely blatant and aggressive form of direct advertising in India, this case has been used to understand the consumer's perception about comparative advertising in India.

RESEARCH OBJECTIVES

The main objectives of this research are:

To know why Hindustan Uniliver limited launch this advertisement.

How this will affect tide's sales.

What will be future of advertisement world.

RESEARCH METHODOLOGY

To attain the above research objectives we carried out an exploratory study and collected data from Primary Sources.

DATA COLLECTION METHOD

2. 3. 1 PRIMARY DATA:

Primary data is collected by first hand information from the survey conducted through a well designed questionnaire (given in Attachment A) which aimed at bringing out people's view for this advertisement, that whether Rin has been right in launching this direct comparative advertisement.

FROM PRIMARY DATA:

Research findings of primary data, where a survey has been conducted by preparing a questionnaire:

SEX:

2. AGE GROUP:

OCCUPATION

Which detergent do you normally use

Which factor is most important while purchasing a detergent?

Are you aware of recent RIN & TIDE controversy?

Which one do you think is better out of Rin shakti & tide naturals?

Do you think Rin Shakti is fair in comparing with tide naturals openly?

Do you think it will affect the sales of tide?

Do you think such kind of advertisement can change consumer perception about product?

What do you think such kind of advertisement should be encouraged?

Do you feel this advertisement will change the scenario of advertisement world?

ANALYSIS AND CONCLUSION

Though India has been exposed to comparative advertising for a long time, it is only in the recent years that India has experienced the new trend of direct comparative advertising. The Indian laws have made provision for comparative advertising provided that they don't mislead the consumer and disparage the competitor brand.

Since Rin vs. Tide is the first absolutely direct comparative advertisement its legal implications and impact on consumers is yet to be seen.

However the following points can help concluded about direct comparative advertisement in India

ASCI, which is the main regulator of the advertising in India is a non government body. Thus it can only create psychological pressure on companies, since its decisions are not legally binding. If direct comparative advertising was to become a reality, India would require much stronger laws to prevent disparagement of challenged brands.

The benefits of such advertising are yet to be seen. Again, the challenging brand should be prepared to face retaliation from the challenged brand. In

such a case the consumers are caught between the wars of two brands which ultimately leave them confused. This is not in favor of both the competing brands.

Such advertisements should not be launched by market leaders. They should be launched by followers. For market leaders the better strategy would be to stay quiet and not retaliate through any advertisement. Knowing the emotional and sensitive nature of Indian audience it is very likely that the challenged brand would receive public sympathy. Also, the followers benefit from these advertisements particularly when they are less known brands since it brings them to limelight.

The decision of Rin - Tide case would be major deciding factor about the future of direct comparative advertising in India. If the decision goes in favor of Rin then all the major brands like Coke and Pepsi, Colgate and Pepsodent etc. can also follow Rin's strategy. International brands like Coke and Pepsi have been openly following comparative advertisement in US, so they can also do the same in India.

In case too many brands start going for comparative advertising, then the impact of these advertisements upon consumers may get diluted.

Finally, even direct comparative advertising (if done properly) may not be misleading and unethical. The challenging brand should focus on highlighting its product superiority without disparaging the competing brand.