Comparative Advertising in India: Concept, Status and Self-regulatory Framework

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Abstract

In the words of Sigmund Freud “Humans are born screaming for attention”. It seems that competition is also an inevitable consequence of this basic human instinct. At every stage in life, success is often measured by how we equip ourselves to cope up with competition and one such area where we cannot deny its existence is undoubtedly ‘advertising’. Advertising is, after all, merely a reflection of human behavior. Therefore, to counter competition and to show oneself as the best, marketers often resort to ‘comparative advertising’.

Due to the newness of comparative advertising as an advertising strategy, there has been sparse academic discussion and research finding, especially in India. The area of comparative advertising in India and its regulatory aspect has largely been left unexplored. This article presents the background on comparative advertising and explores the current status of comparative advertising in India along with its self-regulatory framework. As the global marketplace is becoming increasingly crowded, this article also tries to study the global advertising scenario with respect to comparative advertising. This study is conceptual in nature and mainly uses secondary sources. The sources used in this study include books, research articles, newspapers, internet sources, related works and other documents.

Keywords: Comparative advertising, advertising self-regulation, Direct comparative advertisement, Indirect comparative advertisement, Cross-cultural advertising, ASCI.

Introduction

In this era of cut throat competition, fierce marketing and war of the brands, comparative advertising is a very significant and definitely an interesting phenomenon. The term “comparative advertising” refers to any form of advertising in which a trademark owner draws a comparison between his product, service, or brand and that of a competitor (Romano, 2005). Comparative advertising involves both direct and indirect comparisons. A direct comparison advertisement explicitly names the competing brand and compares its attributes or benefits (e.g. “Lifebuoy kills more germs than Dettol antiseptic liquid”).

An indirect comparison advertisement involves a subtler comparison such as the “leading brand” or “Brand X” which does not explicitly

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name the competing brand (Barry, 1993; Beard & Nye, 2011).

The underlying principle that favors comparative advertising is that it provides additional and factual information about the relative merits of competing brands to the consumer.

It can help a consumer in taking better and well-informed decisions about purchasing a brand. Such type of advertising promotes the transparency of the market by accurately and objectively informing the consumer. Comparative advertising also plays an important role as a positioning strategy that can help a new brand compare its attributes with the market leader and hence reduces market entry barriers. In a research article, Gorn & Weinberg (1984) found that comparative advertising was able to reduce the perceived difference between the challenger and the brand leader across some product categories. So it had a positive effect on perception.

Though comparative advertising has its advantages, it does not come without any risks. It is an inherently controversial subject because of its fiercely competitive nature and has often raised concerns from various sectors such as the media, the government and the advertising industry itself.

There is also a danger that the advertising brand may denigrate or disparage its competitor in such a way that the reputation of the competitor is negatively hampered or affected. Thus, the extent of comparison and the boundaries of comparative advertising have always been debatable and this issue also needs to be studied from the perspective of the self-regulatory mechanism regulating it.

Global Scenario of Comparative Advertising

The nature and intensity of comparative advertising differs among different countries. Comparative advertising may or may not be acceptable in a country depending upon its culture. It is avoided in some countries as comparison is seen as haughty and inappropriate in certain cultures whereas it is acceptable in some countries where face to face competition is encouraged.

Studies indicate that comparative advertising is mostly unacceptable in collectivist cultures such as China, Japan and Thailand but it is an acceptable form of communication in individualist cultures like the US and the European Union.

The phenomenon of comparative advertising became popular during the 1970s when the U.S. Federal Trade Commission (FTC) began encouraging advertisers to make comparisons with named competitors, with the broad, public welfare objective of creating more informative advertising. The use of comparative advertising became commonplace in the U.S. and was considered a well-recognized form of advertising.

On the other hand its adoption took a little longer in the European world. Most European Union (EU) countries prohibited it until 1997 after which the EU Comparative Advertising Directive allowed advertisers to refer explicitly to competitors in the interests of competition and public awareness. But comparative advertising is still limited in countries like Greece, Portugal and Belgium. Thus, it has become apparent that comparative advertising is well-known in almost all parts of the world.
Status of Comparative Advertising in India

The traditional Indian society was a participative society rather than a competitive one like the US. This society which was governed by norms in all aspects of an individual’s life, actions and social relationships underwent a change in the last century, driven by individuals who espoused success that was emulated by the masses. The cultural value of competition and achievement which was seen as an alien concept in the Indian society of participative people slowly gained popularity (Hawkins, et al., 2007). In 1990s, post-liberalization of the Indian economy this competitive spirit became an acceptable or rather desirable trait in individual behavior. This change in the Indian psyche led to the emergence of comparative advertising in India.

Initially comparative advertisements in India only exemplified sponsor’s product and the compared brand could not be guessed easily. The use of indirect comparison was seen and the comparative advertisements did not explicitly state that the competitive product was of inferior quality. Over a period of time, though, the comparisons started becoming more open. One of the first instances of this type of comparison was seen in 1994, when the salt brand Captain Cook owned by DCW Home Products Ltd (now owned by Hindustan Unilever) challenged the brand Tata Salt by showing a package that looked exactly like the Tata product. This comparison positioned Captain Cook as a “free flowing salt unlike your favorite wafadar salt (Tata salt)”.

Similarly, in another notable comparison in 1996, Kiwi Liquid Wax Polish took on Cherry Blossom Shoe Polish where a squeamly and clearly unlikable liquid (polish) was dripping from a bottle marked X, while no such liquid dripped from the Kiwi bottle. The shape of the bottle X left made it obvious that it was Cherry Blossom.

The ongoing battle between brands became more explicit in the later years when in 2004 Hindustan Lever Ltd (HLL) in an ad in English daily Hindustan Times suggested, in no uncertain terms that its product Fair & Lovely Anti-marks cream was greatly superior to Nomarks and Garnier Light. “The Truth, Not Just Promises”, HLL claimed and presented a bar chart statistically deducing that Fair & Lovely Anti-marks cream was indeed the most effective blemish removal cream in the country when compared to Nomarks and Garnier Light (Vaid, 2004).

Another recent example of a direct comparison was seen in the toothpaste market. In 2013, Pepsodent released an advertisement that directly compared Pepsodent Germicheck with Colgate Strong Teeth with a claim that Pepsodent Germicheck is 130% better in fighting germs than Colgate Strong Teeth. It conveyed that Colgate Strong Teeth was no longer a good product.

Such cases of comparative advertising have been prevalent in India and there have been a number of high-profile comparative advertising campaigns carried out by companies, both domestic and international, operating in the country.

Self-regulatory Framework considering Comparative Advertising in India

Advertisements in India are regulated by the Advertising Standards Council of India (ASCI) which is a self-regulatory voluntary organization of the advertising industry established in 1985. The role and function of ASCI and its Consumer Complaints Council (CCC) is to deal with complaints received from
consumers and industry, against advertisements which are considered false, misleading, indecent, illegal, or unfair to competition, and consequently in contradiction to the ASCI Code of Self-Regulation in advertising.

The Advertising Standard Council of India has adopted a Code for Self-Regulation of Advertising. It is a commitment to honest advertising and to fair competition in the market place. This code has also found support from the Government of India by becoming a part of Cable Television Networks (Amendment) Rules, 2006 in which TV commercials will abide by the ASCI Code. Thus, the Ministry of Information and Broadcasting has adopted the ASCI’s self-regulatory code for television advertising which has given it legal recognition.

The ASCI position on the form and manner of comparative advertising has been laid out in Chapter IV of the body’s Code for Self-regulation in Advertising. It is stated herein that advertisements containing comparisons with competing manufacturers and sellers are permissible in the interests of vigorous competition and free dissemination of information, subject to the following requirements being satisfied:

1. Advertisements containing comparisons with other manufacturers or suppliers or with other products including those where a competitor is named is permissible in the interests of vigorous competition and public enlightenment, provided:
   (a) It is clear what aspects of the advertiser’s product are being compared with what aspects of the competitor’s product.
   (b) The subject matter of comparison is not chosen in such a way as to confer an artificial advantage upon the advertiser or so as to suggest that a better bargain is offered than is truly the case.
   (c) The comparisons are factual, accurate and capable of substantiation.
   (d) There is no likelihood of the consumer being misled as a result of the comparison, whether about the product advertised or that with which it is compared.
   (e) The advertisement does not unfairly denigrate attack or discredit other products, advertisers or advertisements directly or by implication.

2. Advertisements shall not make unjustifiable use of the name or initials of any other firm, company or institution, nor take unfair advantage of the goodwill attached to the trade mark or symbol of another firm or its product or the goodwill acquired by its advertising campaign.

3. Advertisements shall not be similar to any other advertiser’s earlier run advertisements in general layout, copy, slogans, visual presentations, music or sound effects, so as to suggest plagiarism (The ASCI Code for Self-Regulation in Advertising, Chapter IV).

**Self-regulatory Framework considering Comparative Advertising in Other Countries**

**United Kingdom**

Under the threat of external regulation, the advertising industry in Britain considered the establishment of a self-regulatory mechanism to satisfy the concerns of policymakers and consumers. The Advertising Standards Authority (ASA) was established in 1962, with
the objective of ensuring that advertisements were ‘legal, decent, honest and truthful.’ With regard to comparative advertising, the ASA states that ‘Advertisers should not unfairly attack or discredit other businesses or their products.’ An instrumental role in developing the above mechanism has been that of a European Union directive permitting comparative advertising in the interests of competition and public awareness. The only condition imposed therein is that the promotion should not be misleading and should genuinely compare competing products.

ASA’s ruling are enforceable as it has entered into an agreement with media houses to not carry any advertisement that deems to have breached the Advertising Code set out by it. Also, ASA may refer persistent cases of infringement to the Director General of Fair Trading, who has a statutory duty to obtain injunctive action against false advertising.

**United States**

The Advertising Self-Regulatory Council (ASRC) is the American advertising industry’s self-regulatory body which was formerly known as the National Advertising Review Council (NARC) established in 1971. ASRC has different self-regulatory units such as the National Advertising Division (NAD), Children’s Advertising Review Unit (CARU), National Advertising Review Board (NARB), Electronic Retailing Self-Regulation Program (ERSP) and Online Interest-Based Advertising Accountability Program (Accountability Program.) The self-regulatory system is administered by the Council of Better Business Bureaus (CBBB).

The NAD resolves disputes regarding ‘comparative advertising claims’. Comparative advertising issues brought to the NAD’s attention receive a thorough review by highly competent attorneys who apply relevant precedent in reaching a determination of whether the advertising claims at issue are truthful, non-misleading, and substantiated. Parties may appeal NAD decisions to the National Advertising Review Board (NARB).

Due to NAD’s strong reputation and its growing recognition, it commands the respect of national advertisers, advertising attorneys, federal and state regulators, and the judiciary.

**China**

Till the late seventies, almost all of the advertising industry in China was considered as “propaganda tool for the service of capitalism” or “performance of capitalist management and waste” (Chen, et al., 2009). Advertising in China was strictly prohibited during this time. Even newspapers were not allowed to publish advertisements. Presently advertising in China is mostly government oriented; self-regulation in the advertising industry is supplemental. China Advertising Association (CAA) is the only national self-regulatory organization for advertising. CAA is directly under the State Administration for Industry and Commerce (SAIC) which implements overall management of the advertising industry.

According to the Criteria for Advertising Examination issued by the SAIC in 1994, comparative advertising should not involve any direct comparison or specific products or services. Since the provisions seem to be rather vague or too strict, brands hesitate to engage in comparative advertising. Aggressive campaigns that might work in other countries can be punished in China. So, it is interesting to note that the self-regulation related to comparative advertising in China is different to that of India, UK and US.
Some Rulings of the Advertising Standards Council of India (ASCI) regarding Comparative Advertising

The ASCI has upheld many cases of comparative advertising where the comparison did not adhere to its code of conduct. In 2004, ASCI described an advertisement by LG Electronics as “misleading” where LG air conditioners claimed to be “India’s No.1 Brand” and which claimed to provide “healthiest air”. This claim of providing the healthiest air was not substantiated with comparative data of LG air conditioners versus other competing products.

In another case of comparative advertising in 2010, an ice cream brand of Supreme Food Industries MeriiBoy Ice Cream was found to be misleading the consumers by claiming that the contents of a competitor’s products were artificial. The CCC found the comparison between MeriiBoy Ice cream and Medium Fat Frozen Dessert as unfair and misleading. As per the CCC decision, the leaflets were withdrawn from the market and website content modified by the advertiser (Campaign India Team, 2010).

The CCC has also upheld a recent complaint against GCPL for its Godrej No 1 Soap after it failed to substantiate the claim that it was the purest soap. It was said that the claim in the advertisement, ‘India’s No. 1 Purest Soap’, was not substantiated with comparative data of “purity” of this product versus other products. Also, the claim, by implication, denigrated other soaps in the same brand category (PTI, 2016).

Though there have been many instances wherein advertisers have withdrawn or modified their advertisements appropriately, merely on being approached by ASCI for comments in respect of complaints received, still ASCI lacks the absolute compliance to its directives by many organizations. In August 2014 an advisory was issued to all TV channels by the Ministry of Information & Broadcasting that spoke about violation of ASCI’s rulings by some TV channels and were advised not to carry advertisement that were found to violate the ASCI Code.

In the last two years, almost 80% of the advertisers have agreed to accept ASCI’s rulings and have withdrawn misleading advertisements but 20% of the advertisers did not comply with it. It is generally seen that advertisers drag their feet before they finally modify or remove the misleading or offending advertisement from the market. Even the media houses rarely take the responsibility on themselves and refuse any advertisements even when there is a clear ruling given by the ASCI against it. So, many organizations still turn a blind eye to the ASCI as it doesn’t have the necessary teeth due to its poor enforcement mechanism that lacks power to impose any sanctions.

Conclusion

From a pragmatic standpoint, the findings of this study provide useful insights into the nature and concept of comparative advertising in India. While it is now established that the use of comparative advertising is commonplace in India and increasing in today's marketplace, advertisers must use comparative advertising cautiously because it has important advantages and disadvantages. It is also clear that there are notable differences in the use of comparative advertising from country to country depending upon their respective cultural norms and practices. Individualist cultures accept comparative advertising whereas collectivist cultures mostly oppose them.
An analysis of the self-regulatory framework of comparative advertising in India makes it apparent that it has been relegated to a purely recommendatory function which does not possess the necessary enforcement mechanism to ensure compliance with its directives. It can only create psychological pressure on companies, since its decisions are not legally binding. When compared to the self-regulatory frameworks made for regulation of comparative advertising in different countries, it is clear that there is an absence of a broad and dedicated system which regulates the same in India.

A viable solution is to develop a comprehensive and detailed scheme for regulating comparative advertising in which the rights of both consumer and competitor are safeguarded. This can be achieved if the Indian advertising industry adopts the model of self-regulation which has been implemented by the United Kingdom through its self-regulatory body ASA. Though ASA is not a government body but it has government endorsement as the authority on advertising rules and as the established means for dealing with advertising complaints. Moreover, the norms prescribed by the ASA are legally enforceable which is seriously lacking in the case of ASCI.

Also, the membership of the ASCI is voluntary and it cannot enforce the advertisers, agencies and media houses to become its members. If major industry bodies connected with advertising creation, exposure and sponsorships like Indian Newspaper Society (INS), Indian Broadcasting Foundation (IBF), Indian Society of Advertisers (ISA), Advertising Agencies Association of India (AAAI), etc. made it compulsory for all their members to become members of the ASCI, it would help spread awareness about it and the advertising disputes would be preferably resolved with self-regulation.

References


