Comparative Advertising: An Eye for an Eye Making the Consumers Blind

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Healthy competition has the effect of bringing development. However, it turns ugly when it leads to downfall. Comparative advertising when used with mala fide intention and rancor in the market would only bring down the good product so as to mislead the consumers into buying the wrong products. In India, comparative advertising is rampant, ironically, with utter consternation; one has to accede to the fact that its laws are very bleak and superficial in India. This article throws light upon the legal structure of India with respect to comparative advertising. The article aspires for India’s acknowledgement to its callousness regarding the legal backbone of comparative advertising.

The article further accentuates upon what reforms need to be imbibed in the field of comparative advertising and over strides any other mundane article by elaborating upon what lessons can be learnt from other developed nations in order to see ourselves as the ruling market in the world.

Keywords: Comparative advertising, injunction, corrective advertising, consumer, advertiser, competitor, trademark

In today’s fast moving and frenetic world, nobody has time to sit and contemplate on what is influencing his mind or to be more precise coercing his mind into making a particular decision. Be it the appropriate college or the most suitable commodity one purchases. Is it the peer pressure, is it the product image or is it the quality? Ironically, the former two seem to be the most influencing factors. One such convincing medium is advertisements. If it is repeatedly screened on television or broadcasted on radio in a flashy and attractive way that the product you are purchasing is bought only by losers and that the product the advertisement advocates is the one that winners buy – are you sure you would not purchase the defamed product hesitantly? If it is shown that your favourite superstar prefers the product A instead of B because B is costly, would it make B abhorrent for you? The assumption that the consumers are easily manipulated and the advertisers must therefore be policed has been prevalent for several decades, and with the liberalization of economies, today every representation of product or service is what ‘others are not’¹ but how far should a competitor be permitted to go when seeking to persuade consumers to purchase his products? The legality of comparative advertising, perhaps, the crudest form of Commercial Darwinism in this field is continuously being tested by competitors in situations where a more direct and ‘head-to-head’ form of competition appears too tempting to resist. This is exactly what the article envisages. It throws light on the impact of comparative advertising in duping the gullible and ingenuous consumers into buying the misleading product, encourages ethical advertising and envisages how imperative it is for India to strengthen its law on comparative advertising if it wants to carve its own niche in the world. A world-class legal system is absolutely necessary to support an economy that aims to be world class. India needs to take a hard look at its commercial laws and system of dispensing justice in the commercial matters.²

Comparative Advertising: Pepsi started it, Coke answered it and Sprite laughed last

Known in the trade as, ‘Knocking Copy’,³ comparative advertising is a technique by which a product is compared with a competitive product with the intent of proving its superiority.⁴ In contrast, the more traditional advertising approach of promoting sales is based solely on the merits of a particular product or service. To elucidate upon it in a better way, during the 1996 world cup cricket, Coca-Cola rigorously campaigned itself to be the ‘official cold drink of the Indian cricket team’ and then Pepsi came up with an advertisement saying ‘nothing official about it’. According to the European Council Directive 85/450 of 10 September 1984, Section 2(2a) ‘comparative advertising’ means an advertising which

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explicitly or by implication identifies a competitor or goods or services of a competitor’. Directly using a competitor’s trademarked product or service, or indirectly making a reference to competitor’s product or services by inscription or implication both are covered in this definition.

Generally, the main aim behind comparative advertisement is to promote one’s product at the expense of another. This produces a situation of clashing principles and generates debates on the legality of comparative advertisement. The reason lies in the fact that ‘[t]ypically, comparative advertisements contain more or at least apparently more information than normal advertisements….and the possible abuse or benefit to the consuming public is greater.’ In addition, consumers seem to accord greater importance to comparative claims than to non-comparative claims. Legislative authorities, courts, administrative agencies, researchers, and consumer’s representatives often deal with the same straightforward question: To what extent should the comparative advertising be authorized or limited? The answer lies in the articulation of the conflicting interest of the parties involved in comparative advertising; the advertiser, the competitor and the consumer. Conflict between the advertiser and the competitor plays the most significant role. On one hand competitors will be concerned for their goodwill and on the other hand restriction on comparative advertising will not allow their advertisers to pursue the objective of informing the public about the qualities of their products and services in a way so that a consumer is more likely to buy them. Comparative advertising weakens the commercial magnetism of other’s trademark.

However, dissenting from the popular belief, many might think it is difficult to follow the grounds on which the opponents of comparative advertisements base their arguments. Competition is ‘unfair’ by its nature and leaves no room for sentimental paternalism. The very reason competitor enters a market is to eliminate as many competitors as possible and to acquire the largest possible market share. Comparative advertising verbalizes commercial activity. If one is allowed to compete then why shouldnot he be allowed to state against whom and against what he is competing and adduce evidence to show that what he is offering is superior to what the others are offering? Comparative advertising simply mirrors free market activity and any restrictions other than the condition of truth are unjustifiable and therefore not to be imposed. It motivates producers to enhance the quality of their products. Further, it increases competition by lowering barriers to market entry. Moreover, all consumers benefit from comparative advertising as they are given better options. Also, advertising enhances the potential for increasing profits through market share gains. Comparative advertising is nothing but challenging the facts and is generally less misleading than one-sided advertising. One may say that his washing powder offers the best results but is not he more convincing if he can prove its performance through an objective test? Consumers are presented with a very wide choice and therefore have to be offered detailed information of products. If comparative advertising caters to that need, then how can one object? Consumers do not require commercial ‘songs of praise’ but evidence, which at times is best, provided in a direct comparative study.

**Historical Evolution: A Consequence of Capitalist Tendencies**

The struggle for acquiring the coveted supreme command has always existed. In the nineteenth century, it was amongst the rulers to rule till eternity and in today’s hi-tech world the fight is to rule the market. Commodities given by the market have always been inevitable for our survival. Be it the rich class who want to agglomerate them and carry on with their flamboyance or be it the working class who need goods as bare minimum necessity. The consumer has always been craving for the best with least bit of expenditure following the Bentham’s philosophy of maximum pleasure with minimum loss. In earlier times, the products were scarce and so were not much in competition. The only thing, then, which evaded manufacturers, was identification of their products in the market. Gradually, the concept of registered trademark evolved. As time passed, competition between commodities became fierce making ‘product image’ important for the item to survive in the market. All this led not only to deliberate attempts for enhancement of one’s product’s image but an intentional attempt to abase the competitor’s commodity so as to increase the former product’s market value. Manufacturers could go to any extent to launch their product in the market in a grand way. One of the leading ways was advertisement. In the initial stages of advertisements, the reference towards the rival commodity was not
direct and explicit. Instead, the compared product was referred to as the ‘leading product’. In such cases, target was never clear but reference was evident. However, when in the field of advertisements, the dark road to unfair use of registered trademarks was taken through brazen and petty remarks over the rival product so as to cause damage to its reputation and thrive on it, the gullible consumer was shown the direction in which he is supposed to walk through the light offered as a bliss by the policies curtailing such disparaging practices. So as to accentuate upon the development of comparative advertising, it shall now be dealt under two kinds of laws - common law and civil law.

Initially, common law was hostile towards comparative advertising and it was considered to be an anathema to the society. In 1930’s, UK did not allow even honest comparing of products in advertisements. It was considered to be an unfair business practice for which infringement could be sought. However, laxity to a certain degree was observed in its provisions as evidenced in its Trademarks Act, 1994. As a consequence, if any advertisement honestly compared products without being detrimental to the compared product’s reputation in the commercial market it would not be against the registered trademark. USA, in the nascent stage of comparative advertising, called it to be a tort of unfair competition and so no specific legislation regarding it was considered. The earliest development of comparative advertising started in 1910 through Saxlehner v Wagner, however at that time they were very few in number. In 1946, on becoming more wary, USA passed the Lanham Act. In 1954, through third circuit decision in L'Aiglon Apparel Inc v Lana Lobell Inc, the Court held that Lanham Act shall prohibit unfair competition through false advertising as well as palming-off. In sweeping terms, the Court found that Congress, in adopting Section 43(a), created a federal statutory tort similar to the common law tort of unfair competition. In early 1970’s, comparative advertising became rampant as Federal Trade Commission sanctioned it through letters. The Federal Trade Commission compliments it and checks the truthfulness in comparative advertising.

Civil law, on the other hand, has shown very bleak development in the discipline of comparative advertising and is still afoot. Its use has traditionally been and continues to be very marginal in countries like France. In early 1990’s, in France, hardly handful comparative advertisements were violative of law. On the contrary, Germany, which was not very apprehensive of comparative advertising in the early stages, after Reichsgericht verdict in 1931, prohibited even truthful negative advertising (advertisements criticizing competitors). However, with passing time it too became more flexible. On a general note, Europe always had a liberal approach towards comparative advertising. European Union came up with its comparative advertising legislation in 1978 with provisions allowing comparative advertising. Commission later adopted Directive 84/450/EEC on misleading advertisement.

In the contemporary sense, comparative advertising is an accepted marketing device. Unfortunately, its popularity has also attracted tremendous litigation due to its controversial nature. Consequently, in majority countries it is legitimized only to a certain extent. However, when healthy it is taken as an inevitable source for consumer’s awareness of the market and thus making the producer more vigilant with respect to the products.

An Indian Perspective: More Law, Less Justice

Comparative advertising in India is a recent phenomenon. India enacted its new Trademarks Act, 1999 and the Trademarks Rules 2002, with effect from 15th September 2003, to ensure adequate protection to domestic and international brand owners, in compliance with the TRIPS Agreement. As a measure to protect international proprietors, the Act defines a well-known mark in relation to any goods or services to be a mark well known to a substantial segment of the public using such goods or receiving such services. As was held in the case of Bismag v Amblins, the English law prior to the 1938 Trade Marks Act regarded use of a mark as infringement only if the mark was used as a trademark. Thus, if a trademark was used in a non-trademark context, as was done in the Yeast-Vite case, there was nothing wrong with such use. The Indian trademark law in this regard is a departure from English law. In India, the Trade and Merchandize Act, 1958, is not equivalent to UK Act, which reflects that the courts in India would follow the Yeast-Vite approach rather than Bismag v Amblins line of authorities. Thus, in order to constitute infringement of a registered trademark, the misuse complained must be of ‘use as a trademark.’ The remedy available in India in the case of non-registered trademarks is that of ‘passing off’.
The Trademarks Act, 1999, has incorporated provisions related to the concept in Section 29(8) and 30(1) of the UK Act. According to the statute, comparative advertising is permissible but with certain limitations as to unfair trade practices. ‘Unfair trade practices’ has been defined u/s 36A of the Monopolies and Restrictive Trade Practices, 1969, which stands repealed now. Section 30(1) of Trademarks Act, 1999 reads as:

‘Nothing in Section 29 shall be preventing the use of registered trademark by any person with the purposes of identifying goods or services as those of the proprietor provided the use: (a) is in accordance with the honest practices in industrial or commercial matters, and (b) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trademark.’

Certain limitations are provided by Section 29(8) which reads as:

‘A registered trademark is infringed by any advertising of that trademark if such advertising: (a) takes unfair advantage 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 trademark.’

Another statute, Consumer Protection Act, 1986 provides protection against unfair trade practice but in the case 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. India’s economy is getting more liberalized and competitive with each passing day. The thrust of the competition has shifted to aggressive promotions of the products and services through branding. Changing business practices need to be supplemented with new laws. The Trademark Act, which came into force on 15 September 2003, though new, does not supplement the changing facets of this jurisprudence as it only provides for circumstances under which the comparative advertising is allowed and fails to address many issues of this jurisprudence like what amounts to comparative advertising, when it would lead to product disparagement or what remedy is to be given in case of product disparagement. It’s the judicial pronouncements that are playing the important role in determining the ambit of comparative advertising but they are handful in number. In this era of globalized world where business markets today are as aggressive as they can be; where everything is about one brand’s superior claim against that of the competitor; where the business struggle is more than ever, not only to gain the attention of the potential customers but also to keep them as patrons, comparative advertisement laws become imperative. Are these judicial pronouncements sufficient ‘yard stick’ to answer the questions that arise in the disputes relating to ‘comparative advertising’? The answer requires a study of these judicial decisions and determination of the current situation in this regard.

Reckitt & Colman of India Ltd v Kiwi TTK Ltd26 is one of the earlier cases in which the Delhi High Court examined the scope of comparative advertisement. In this case, the dispute was regarding an advertisement, which showed two shoe polish bottles, one with the Kiwi brand name, which did not drip, and another with brand X which was shown as dripping. The second bottle had a red blob like a cherry, which is a part of Reckitt & Colman India’s products. Besides, in the advertisement shown through electronic media, defendant had also been circulating ‘point of sale’ poster materials at shops and marketing outlets selling similar products. It is alleged that in the said post material circulated by the defendant, the bottle showed ‘OTHERS’ with faulty applicator allegedly resembling the applicator of plaintiff. The Court ruled that the respondents will have to remove the red object from the advertisement and the posters will have to be necessarily withdrawn.

The Court laid down five principles with regard to comparative advertising of a product:

(a) A tradesman is entitled to declare his goods to be best in the world even when the declaration is untrue.
(b) He can also say that ‘my goods are better than his competitors’, even if such statement is untrue.
(c) For the purpose of saying that his goods are best in the world or his goods are better than his competitor’s, he can bring out the advantages of his goods over the goods of others.
(d) He, however, cannot while saying his goods are better than his competitors’, say that his
competitors’ goods are bad. If he says so, he is liable for slandering the goods of his competitor. In other words, he defames his competitors and their goods, which is not permissible by law.

The first and the second principle laid down by the Court with regard to the comparative advertising of a product is called as the ‘puffery rule’ which was later endorsed in Pepsi Co Inc and Anr v Hindustan Coca Cola and Ors. This rule of puffery does not prohibit vague and general comparative advertisement; a competitor is entitled to declare his product as the best in the world as long as he is not disparaging the product of his competitor. The courts in India have developed ‘puffery rule’ by getting inspired from USA without regard to the different consumer standards in the two countries. The rule of puffery offers many protective shields under which many unscrupulous activities of the unethical comparative advertisers can get away from punishment. In this context, the French requirement would have better suited India.

According to the French yardstick of objectivity, ‘the claim should objectively compare relevant, decisive, verifiable and representative features of the goods or services…’ The model of objectivity in comparative claims, which had developed judicially in France, reflects the concern of courts and legislature to make comparative advertising a tool of information to the consumers about the features of the goods or services marketed. In other words, the claim has to compare characteristics of goods or services. Any vague, general, or subjective statement is forbidden. Therefore, claims such as ‘product X is better than product Y’ should be held unlawful and the elements such as taste, flavor, smell, aesthetics, smoothness, or sweetness should not be compared. However, this requirement of objectivity would differ from the rule of puffery prevailing in US advertising law. The US law only prohibits false statement of fact, as opposed to the statements of opinion. Statement of fact is a ‘specific and measurable claim capable of being proved false or of being reasonably interpreted as a statement of objective fact.’ By contrast, when an assertion is ‘obviously a statement of opinion,’ it cannot ‘reasonably be seen as stating or implying provable facts.’ Such opinion type statements are commonly referred to as ‘puffery’. In essence, it can be seen that the requirement of objectivity proves the advertisements to be useful to the consumers and puffery encourages comparison, which are of less use to them. Another reason why US puffery rule is not suitable to India as compared to the French requirement of objectivity is the different positions regarding the consumers’ behavior toward advertising in two countries. As compared to the consumers in US who are rational, reasonable, and sophisticated enough not to believe that vague, general, and subjective statements are literally true, the consumers in India are credulous, ignorant and unthinking ones and hence the French requirement of objectivity would have better suited the India. It is therefore true that the first two principles laid down in the above case seem to have zero consideration for the consumer standards in India.

The principles laid down in the above case were also endorsed by the Calcutta High Court in the case of Reckitt & Colman of India Ltd v M P Ramachandran and Anr. Once it is clear that trademark has been used, the next issue is to prove infringement, which has to be determined as to whether it has been used in disparaging the goods of the owner of the trademark. When the latter is established, it gives rise to action against trademark infringement. Use of trademark to disparage the goods of another has been dealt with in a few cases which are explained below:

In Hindustan Lever v Colgate Palmolive (I) Ltd, the Supreme Court examined the scope of comparative advertisement. In this case, ‘New Pepsodent’, new toothpaste was introduced in the market by Hindustan Lever which had claimed to be 102% better than the leading toothpaste. Despite the voice being muted, the lip movement clearly indicated Colgate as the other leading brand. Also, the jingle used for the leading brand pointed to the same. Court held that despite no direct reference such reference with respect to inferiority amounted to disparagement. The above case was decided by the courts in accordance with the laws in developed countries, however, no test had been laid down to show as to what amounts to product disparagement. Realizing this call in Dabur India Ltd v Wipro Ltd, the following factors were laid down to judge whether a particular claim amounts to product disparagement:

(1) Intent of the commercial,
(2) manner of the commercial, and;
(3) storyline of the commercial and the message sought to be conveyed.
This case however, does not seem to set an adequate precedence with regard to the product disparagement as the factors laid down does not show as to what amounts to the product disparagement. For this case, reliance could have been held on the American case of *American Home Care Products Corp v Johnson & Johnson* wherein, the following test as to what amounts to the product disparagement was laid down:

(a) The defendant had made false or misleading statements as to another’s product;
(b) There was actual deception or at least a tendency to deceive a substantial portion of the intended audience;
(c) The deception is material in that it is likely to influence purchasing decisions;
(d) There is a likelihood of injury to the plaintiff in terms of the declining sales, loss of goodwill, etc.

In *Dabur India Ltd v Wipro Ltd*, the Court further laid down certain conditions wherein comparative advertising could be permissible if:

(1) It is not misleading.
(2) It compares goods or services meeting the same needs or intended for the same purpose.
(3) It objectively compares one or more materials and relevant, verifiable and representative features of those goods and services which may include price;
(4) It does not create confusion in the market place between the advertiser and his competitor or between the advertiser’s trademarks, trade names, other distinguishing marks, goods or services and those of a competitor’s;
(5) It does not discredit or denigrate the trademarks, trade names, other distinguishing marks, goods or services, activities or circumstances of a competitor;
(6) For products with designation of origin, it relates in each case to products with the same designation;
(7) It does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
(8) It does not present goods or services as imitation or replicas of goods or services bearing a protected trademark or trade name.

The above guidelines are in accordance with the law in other developed countries but they are very broad guidelines. They do not address as to what would amount to misleading advertising or product denigration as was done in the *American Home Care Products Corp v Johnson & Johnson*. Further, the above guidelines are also inadequate on the ground that it does not address the issue of the use is in accordance with the honest practices, as honest practices in industrial and commercial matter is a valid defense in the action for trademark infringement by virtue of Article 30(1)(a) of the Trademarks Act, 1999. This is an important void as compared to the laws in UK where in case of *Bank Plc v RBS Advanta*, the guideline as to what amounts to honest practices with regard to the comparative claims in the advertisement was given. It was opined in that case that, honesty must be gauged objectively against what is reasonably to be expected by the relevant public of advertisements for the kind of goods or services in issue, i.e. the objective test is based on the attitude of the addressee of the advertisement and custom/practice in the relevant business sector. This could certainly be a welcome addition for Indian law regarding comparative advertising.

This is the limited law regarding comparative advertising in India today, which needs desperate attention by the Indian Government as it not only lacks judicial precedents (the only authority available regarding adjudication of disputes with respect to comparative advertising) but is also suffering from grave paucity in statutory authorities. It is undoubtedly true that India has shown very bleak development in the field of comparative advertising. However, for it to reach the acme of development, the strengthening of the legal backbone of comparative advertising is exigent. This part of the article offers plausible solutions by referring to the lessons learnt and means adopted by other developed nations.

**Conditioning the F(laws)**

In the changing context of proliferation of advertisements, the law needs to be further strengthened in its application in India for the disputes arising out of comparative advertising. To the contrary, even the existing law has been liquidated with the repeal of Monopolies and Restrictive Trade Practices Act. Though, the judicial pronouncements are playing an important role in determining the disputes arising out of comparative advertising, but they seem to set an inadequate precedence. The
question is not whether a consumer has adequate remedies and protection against such unfair trade practices of corporations but whether the warring corporations have adequate law against unfair trade practices, and justice delivery system to have some ‘rules of the game’ for competing amongst themselves.¹ This article suggests certain changes that are to be brought so as to bolster the laws relating to comparative advertising.

Need for a Statute

With the widespread use of comparative advertising came many of the typical advertising abuses, which were delightfully very vague. The most common types of abuses include: false claims, where the advertisers claim that his product does something that others product fail to do;³⁷ product disparagement, where the advertiser unjustifiably attacks a competitor’s product;³⁸ and false representation, where the advertisement is misleading. The law needs to respond to these abuses in a number of ways and mere judicial pronouncements will not be enough. A statute would consolidate and codify the fundamental principles, values and aims and objectives of the prohibition of product disparagement. It would also provide a legal framework to ensure that critical issues such as, when comparative advertising can be allowed, when it will amount to product disparagement or what remedies can be provided in what circumstances. A statute would certainly have an advantage over the judicial pronouncements as it reflects the will of the majority in a democracy and will be able to provide a more settled law unlike judicial pronouncements, which a court can entirely regard or disregard as a precedent.³⁹ Therefore, we require the statute as desperately as a drowning man needs the shore.

Awarding Damages

Injunction is the only remedy given by the court in the matter of product disparagement. The most potent argument for the popularity of this remedy is that it eliminates the abusive advertisement from the market place.⁴⁰ However Injunction is a remedy, the purpose of which is to implement a court’s judgment that a wrong has been and will be committed, and to restore the beneficiary to its rightful position but in the case where disparaging remarks are being addressed to a particular product, will the injunction be able to undo all the loss of reputation that the product has suffered? It will at the most eliminate the abusive advertisement from the market place but it would not be able to restore the beneficiary to its rightful position and undo the loss of reputation.⁴¹ It is therefore spot on to say that Injunction is not a remedy tailored to address a wrong or to protect a right in case product disparagement and insistence on finality in the face of an ineffective remedy is empty formalism.

The most shocking fact of the Indian law on comparative advertising is that no damages have ever been awarded in the matters of Comparative Advertising. In fact, it is considered impossible to prove that a particular advertisement or campaign was the direct cause of loss in a sales or potential sales by the competitor. In this regard it is imperative for the judges to make sure that cases do pass the injunction stage and open a new door for damages. Such damages may come in the form of corrective advertising as well as monetary awards.

Corrective Advertising: Undoing the harms

One type of relief that may be granted is corrective advertising. This is an award of money specifically calculated so as to be spent on advertising that will correct any confusion caused by the abusive advertisement. This form of remedy is often resorted to in US where quite often the defendant is charged with the task of circulating the corrective advertisement.⁴² It was practiced in *U-Haul Intern, Inc v Jartran Inc*.⁴³ In Warner–Lambert, Court ordered corrective advertising so as to undo 100 years of deceptive advertising.⁴⁴ Its most significant feature is that it repairs the reputation loss.⁴⁵ The Court may even order specific language of the corrective advertisement and the duration of the campaign for the above.⁴⁶ The statement in the corrective ad would be selected to counteract the misleading or false message of the abusive ad. The corrective advertisement must be designed to stimulate truth in the consumer’s minds while erasing the earlier deceptive message, which caused confusion and thus affected purchase decisions. Furthermore, corrective advertising helps support future truthful ads.

Monetary Awards

Dishonest comparative advertising is a flagrant attempt to abase the competitor’s product. Since it causes special damage to the product, that is pecuniary harm, damages must be awarded to the aggrieved party. Other states such as Delaware offer Uniform Deceptive Trade Practices Act⁴⁷, which provides several remedies in case of disparagement of
goods. Under the provisions of the revised Lanham Act of USA, violations under Section 43(a) will entitle the plaintiff, under certain circumstances, to defendants' profits, damages sustained by the plaintiff, costs of the action, and up to three times the amount found as actual damages in the discretion of the Court and according to equitable principles. Attorney's fees are available in exceptional circumstances. In USA, four different bases exist on which to award compensatory damages:

1. Profits lost by plaintiff due to infringement;
2. Actual business losses caused by the infringement other than lost profits;
3. Defendant’s profits as an estimate of plaintiff’s lost profits; or
4. Defendant’s profits on an unjust enrichment theory.

India must imbibe and learn from these provisions to legislate certain enactments which cater to the need for damages. However, while making these provisions, must be cautious of overcompensation or under compensation. In the former, it leads to enhanced risk so lesser production of goods ending up in lesser choices available to consumers while in the latter, the wrongful advertiser shall escape unharmed.

**Conclusion**

Advertising is the most appropriate way or may be the inevitable medium for a manufacturer to reach out to the consumers and through the truth or false perception coerces them into purchasing his product. As was once said by George Santayana, ‘advertising is the modern substitute for argument; its function is to make the worse appear better’. In furtherance of the same, comparative advertising reaps even better fruits. Known in the trade as, ‘Knocking Copy’, comparative advertising is a technique by which a product is compared with a competitive product with the intent of proving its superiority. However, the grey area is the legality of nature and extent of such advertising. It is almost nil in India. It is exigent for our nation to make the laws with respect to the same very stringent if it wants to carve a niche for itself in the market economy of the world.

India has been resolving disputes regarding comparative advertising only through its legal precedents, which too are handful in number. It has failed to realize the urgency of a statute, which could specify what road, can be taken by the advertisers and what has to be discarded by them. The European Council Directive serves as an exemplary provision in this regard from which India must imbibe certain measures. To further accentuate upon the weakness of the Indian law on comparative advertising, it permits general and vague comparative advertising as per the puffery rule. In this regard, the French requirement of objectivity would have better suited the Indian context. Furthermore, the only remedy offered to the aggrieved party in comparative advertising is that of injunction but India must realize the urgency of damages as a remedy to undo the harm that has been caused to the innocent manufacturers. Through injunction the unethical and wrongful advertising might be stopped but the reputation once lost cannot be earned back with ease. For the same, corrective advertising and monetary awards must become established remedies in India, as has always been the case in USA and UK. From this discussion it can be easily educed what reforms need to be imbibed in the field of comparative advertising in order to be the ruling market in the world and erase all traces of once being a developing nation.

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14 *216 US 375, 30 S Ct 298, 54 L Ed 525 (1910).*

15 *118 F Supp 251 (E D Pa 1953)* the defendant had priced his dress at a lower price than the plaintiff’s dress and pasted the latter’s dress’s picture on the advertisement of his dress.

16 L’Aiglon Apparel, 214 F 2d 651.

17 Kohler MuW XVI (1916/17), 127; Lobe MuW XVI (1916/17), 129.


23 (1940) 1 Ch 667.

24 *Irving’s Yeast-Vite Ltd v Horsenail*, (1934) 51 RPC 110.