



Comparative Advertising Effectiveness with Legal and Cross Culture Framework

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Abstract:

In words of Leo Burnett "Good advertising does not just circulate information. It penetrates the public mind with desires and belief." And in today's world advertising has become a battlefield for creating unique, cutting-edge, and innovative ways to communicate information to customers to facilitate and positively influence their buying decisions. When advertising is taken to a competitive level, companies tend to promote their products and services by comparing them with those of their competitors to gain consumers' attention and enhance their sales. This form of advertising is stated as Comparative Advertising.

Due to novelty of Comparative Advertising as a promotional technique, there has been proportionately lesser research findings and a very loosely defined legal framework, especially in India. So, this article tries to review the literature on the effects and come out with general findings on the use and effectiveness of Comparative Advertising. The understanding of the law and the effects of Comparative Advertising is also studied on cross country basis due to the changing scenario of trade and commerce in the world or in other words, due to increasing Globalization. Manufacturers of goods or services, target the whole world as their market which leads to the need of monitoring their audience very closely. A cross country study helps to fulfill this need and understand the differences in national cultures and how Comparative Advertising is perceived in these cultures.

Keywords: *Comparative advertising, Cross country effects, Disparagement, Federal trade commission, Memory Perception, Puffery*

1. Introduction

The history of Comparative Advertising dates back to the beginning of commerce itself. It has always been normal for a trader to attempt to enjoy pecuniary benefits by drawing a comparison between the qualities of his products/services and a competitor's.

Comparative Advertising, also referred to as 'knocking copy', is an advertising technique where the message is about making comparisons about features, such as quality, price, delivery terms, services and others, of a company's products as compared to the products of the same type belonging to one/several competitors. Therefore, companies pursue in getting immediate advantages, at least by deflecting attention of some of the buyers towards their brands.

FTC (Federal Trade Commission) of U.S.A defines Comparative Advertising as "advertising that compares alternative brands on objectively measurable attributes or price, and identifies the alternative brand by name, illustration or other distinctive information". The types of Comparative Advertising range from comparing a single attribute dimension, comparing an attribute unique to

the target and absent in the referent and comparisons involving attributes unique to both brands. It takes place either directly, by using the competitor's trademarked products, or indirectly, by making a reference to the competitor's products by insinuation or implication. Thus, an ad showing MasterCard launched a campaign that used funny 30-second commercials to depict frenzied American Express Card holders rushing madly around unsuccessfully trying to find an ATM that would take their card or another ad by thumbs up showing that people who choose to drink “pepi” are not grown-ups and it’s a “bachon waali drink”.

Prior to the 1970s, Comparative Advertising was deemed unfeasible due to related risks such as misidentification of products, potential legal issue, Puffery or Disparagement¹. In 1972, however, the Federal Trade Commission (FTC) of America began to encourage advertisers to make comparison with named competitors, with the broad, public welfare objective of creating more informative advertising. In France, Comparative Advertising was authorized in 1992 and applied to some similar products and services using the same sales conditions such as before it is broadcast, the comparative message must be made known to the opposite party in due time to be eventually cancelled or the comparison must be loyal, truthful, undeceiving and objective. In India, the law on Comparative Advertising has developed through judicial precedent. During the late 1990s, any statement or which demeans or disparages a competitor’s product was not permissible. This view was consistently upheld by courts in many cases. However, in recent times the courts have held that companies should not be too sensitive when it comes to Comparative Advertising. The refusal of an injunction to Colgate appears to be a sign that courts recognize the maturing of economies and consumers. This may just be the beginning of a new jurisprudence requiring companies to show greater tolerance to Comparative Advertising and a signal that market fights ought to be fought in the markets and not in a court of law.

Comparative Advertising not only allows honest comparison but it also forms a part of rights to freedom of speech and expression of producers of goods and services. In *Tata Press Limited v Mahanagar Telephone Nigam Limited and Others*, the Supreme Court held that "commercial speech" is a part of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. Also, in *M. Balasundram v Jyothi Laboratories and Another*, the courts have taken the position that “publicity and advertisement of one's product with a view to boosting sales is a legitimate market strategy”. This would amount to exercise of fundamental right to practice any profession, or to carry on any occupation, trade or business. (Chhabra, 2010)

In an article on Comparative Advertising in the Cambridge law journal the author pointed out that “Only monopolists enjoy the luxury of promoting themselves for their own sake. Those who compete invite comparison and themselves engage in it (Comparative Advertising) pretty frequently” (Cornish, 1992). While Cornish (1992) highlighted the need of Comparative Advertising from the point of view of competitors, in another article by Harmon, Razzouk and Stern (1983), authors bring out a research on one of the most important role of Comparative Advertising which is “Information” and the results indicated that comparative ads did indeed have greater information content than non-comparative ads. Also, their finding supports the original intent of the FTC when it encouraged comparison in advertising in order to provide the consumer with more information.

Thus, we see Comparative Advertising can be a powerful tool if used with careful designing. That is why there have been constant efforts around the world to make Comparative Advertising more popular due to its huge benefit. However, with the risks attached to it the growth has been

¹Puffery means exaggerations, opinions, and superlatives, with little or no credible evidence to support its vague claims
Disparagement is a communication that belittles somebody or something

restricted. Thus, the extent of comparison and the boundaries of such ads have always been debatable. This is due to the bad side effects of this technique such as many a times unknown or little known brands may use the brand name of their bigger competitor and may gain unfair advantage or 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. Also, the use of puffery in such ads misleads the consumers sometimes and many a times it can be used for disparaging the competitor's product and good name.

Thus due care was needed to design a well-defined legal framework in order to regulate the issues arising out of the use of comparative advertising. In the coming section we shall look at the legal framework and its evolution in India and also have a look at the legal structure in other major countries.

2. Legal framework

2.1 In India

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. An article (Mittal & Singh, 2008) throws light upon the legal structure of India with respect to Comparative Advertising. The article 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. 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.

The courts saw an overflow of cases arriving with the claims of disparagement or false claims by the competitors. With little judicial precedents in the area of comparative ads, the courts were mostly giving the judgments in favor of the competitors and asked the sponsor brands to withdraw or modify the advertisement. This left the scope of Comparative Advertising very narrow. However, with the growth of Comparative Advertising in other countries such as USA and with the benefits it was offering to consumers and the market, it was realized that India was dealing with the concept too sensitively. Thus, India evolved to a more accepting approach and an attempt was made to form provisions and guidelines to distinguish the false advertising from a genuine one. The various provisions that have guided comparative advertising in India are:

2.1.1 The MRTP Act, 1969

Primarily, matters related to untrue and misleading advertising were adjudicated upon by the Monopolies and Restrictive Trade Practices ('MRTP') Commission, constituted under the Monopolies and Restrictive Trade Practices Act, 1969 ('MRTP Act'). Section 36A (1)(x) of MRTP Act says that "a disparagement of another's good becomes an unfair trade practice only if there is use of false or misleading facts". Thus, for an advertising to be accused as "disparaging", it was important that it met two criteria: First, the competing product should be identified in the advertisement, either directly or implicitly. If the compared brand is just shown as "brand X" or "competing brand", bearing no similarity with a particular brand, it may not qualify as disparagement. Second, the claims made in the advertisement should be false or misleading. (Chhabra, 2010). However, the MRTP Act was subsequently repealed by virtue of 66 of the Competition Act, 2002.

2.1.2 The Consumer Protection Act, 1986

After MRTP Act was repealed, the power to enquire into complaints of unfair trade practices was vested with the consumer grievance forums established under the Consumer Protection Act, 1986. However, it fails to provide relief to a competing seller as the CP Act excludes manufacturers, sellers and service providers from its ambit. To overcome this problem, the government expanded the mandate of the Competition Appellate Tribunal (CAT), which has been hearing pending cases of restrictive trade practices. (Gokhale & Datta, 2011)

2.1.3 Advertising standards council of India

It is a non-statutory tribunal comprising an association of advertisers established in 1985. 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. ASCI has been able to ensure a reasonable degree of adherence to its norms from members, a difficulty arises when complaints are filed with regard to the activities of non-members.

2.1.4 The Trademarks Act, 1999

This act provided the safety against the infringement of trademarks. The act said that "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." (Mittal & Singh, 2008)

The onus of regulating advertising in India has been assumed by a wide array of governmental authorities and tribunals, but presently there exists no dedicated statutory mechanism to regulate the dissemination of untruthful or disparaging material through such medium.

It has been suggested the law needs to be further strengthened in its application in India for the disputes arising out of Comparative Advertising. Certain changes that are to be brought so as to bolster the laws relating to Comparative Advertising are Need for a Statute, Awarding Damages, Corrective Advertising, and Monetary Awards. (Mittal & Singh, 2008)

2.2 In other Countries

With the increase in Globalization in past 20 years, Advertising expenditures in foreign markets are expected to continue increasing because of the need of companies to globalize their products in order to keep up with worldwide competition. Many foreign governments have placed restrictions on their advertising markets, where some have allowed it with broader scope. Although Comparative Advertising is not a universally accepted advertising format, it is used in most countries-albeit to varying degrees. It is clear that the landscape advertisers practice their trade on sometimes differ by country or region. (Bao, Gray, & Shao, 2012) .Consequently, companies need to know the legal barriers in various foreign countries before implementing an advertising campaign overseas.

2.2.1 In the USA

In the United States the legal bodies and their provisions are at three levels, namely The Federal Trade Commission (FTC), The International Trade Commission (USITC) and The Lanham Act. (Beller, 1995).

FTC began advocating the use of Comparative Advertising as a way of providing consumers with more information. The usual remedy the FTC obtains in a Comparative Advertising case is a cease and desist order. USITC protects against harmful comparative advertisement of imported goods is to file a complaint with the ITC. If the ITC decides that the complaint is worth pursuing, it will complete its investigation within a year and recommend a remedy. The Lanham act is a

predominant law for false advertising in USA. Under this act, companies can bring private suits directly without having to rely on a government entity to do so for them. The remedies available under the act are injunction, damages, corrective advertising, and monetary awards.

2.3 The European Union

From 1960 onwards European countries have been undergoing a lot of transitions. With the formation of European community countries have tried to harmonize their laws. In 1978 the first proposed directive containing standards for misleading, unfair, and Comparative Advertising was written in order to facilitate the economic integration of the EC. In 1984, the directive on misleading advertising was passed and adopted, and has been the law in all Member States since 1986. In June 1991, the EC published a proposal to amend 1984 Directive to harmonize and liberalize, controls on Comparative Advertising across Europe. Member states that have restricted Comparative Advertising regulation (e.g., France and Germany), the Economic and Social Committee, and the European Parliament all criticized this proposal as too permissive. In April 1994, the Commission published an amended draft proposal with a slightly more restrictive form and optimistically set the provisional deadline for national implementation at December 31, 1995. This time the Commission was criticized by the member states that have a more relaxed view of Comparative Advertising as too restrictive. Finally, 1997 Directive allowed Comparative Advertising according to certain conditions, and the EU member states which forbade any form of products/services advertising as compared to the competitors', had to change their law in order to approve of this type of advertising. (Petty & Spink, 1995). Yet, there is a great variation within countries of the community regarding the Comparative Advertising law. Different countries have different cultures and different laws, which affect the way a firm can advertise. A company cannot simply create a uniform, generic advertising campaign and run it in all European countries. Advertisers must take into account cultural, linguistic, and legal differences. Comparative Advertising, in particular, may be permitted in one European country and prohibited in another (Beller, 1995). The lack of harmonization increases the risks for firms using Comparative Advertising and may therefore partly explain the more cautious use of Comparative Advertising in the EU. (Barigozzi & Peitz, 2004)

2.3.1 Asia

Japan - Comparative Advertising has been legal since 1987 due to the pressure from USA. It is allowed in Japan "where the content is impartial and objectively verifiable, and when the competing product is not subject to slander or libel" (Beller, 1995). However, in spite of the legality, Comparative Advertising remains a taboo in the society. Japanese may gradually accept Comparative Advertising, although its use is still hotly debated.

China - The advertising industry is very young in China. In 1994 the Chinese Government reformed its advertising laws in order to increase fair competition. China does not censor ads, but will not tolerate deceptive ads, and still allows no Comparative Advertising.

The Four Economic Asian Tigers: Singapore, Hong Kong, Taiwan, and South Korea- in Singapore it is allowed but with strict restrictions. Despite the strict standards, advertising agencies like Comparative Advertising and encourage its use as long as the claim can be substantiated and the advertiser refrains from showing its competitor in a bad light. The other three Tigers are not as open-minded as Singapore. Hong Kong has regulations that prohibit Comparative Advertising. Comparative Advertising is also shunned and seldom used in Taiwan and South Korea

It is quite clear from the above mentioned laws in different countries that is a wide difference among countries and this difference not only exists in laws but also extends to cultures. We thus need to understand the cross country studies to accommodate the cross culture differences in the comparative advertisements when presented worldwide.

3. Cross Country Effects

The research findings of cross country helps us to understand that there is no one best way to effective advertising. It needs continuous analysis, evaluations and understanding of the subjects. In this article we have covered only some aspects of culture which could be used by advertisers while advertising abroad, such as Uncertainty avoidance which reflects the extent to which members of a society attempt to cope with anxiety by minimizing uncertainty. In a study it was concluded that cultures low in uncertainty avoidance adopt Comparative Advertising easily as compared to cultures with high uncertainty avoidance. (Donthu, 1998).

Secondly, we saw that low context cultures prefer direct Comparative Advertising, whereas high context culture may react well to indirect one. (Bao, Gray, & Shao, 2012). A high context culture is where a few words can communicate a complex message very effectively while in a low-context culture, the communicator needs to be much more explicit and the value of a single word is less important.

Also, we classified countries on individualist-collectivist parameter and found that individualist cultures accept comparative ads as opposed to collectivist culture which dislikes comparative ads. (Maheswaran & Canli, 2000). Individualism advocates that interests of the individual should achieve precedence over the state or a social group. While Collectivist orientations stress the importance of cohesion within social groups.

Advertisers should make a careful evaluation before targeting a nation as its potential audience. a detailed analysis of its legal and cultural structure should be done. It is only after one understands the audience completely that he/she can proceed to grasp the effectiveness of any medium on the target audience. Thus, Advertisers are primarily interested in the effectiveness of Comparative Advertising in terms of conveying information to an audience, making consumers aware of the promoted product, persuading consumers to like it, and eventually convincing the target market(s) to make a repeat purchase. Currently, there is substantial disagreement among practitioners about the communication effectiveness of Comparative Advertising. In this study we reviewed some articles to know how effective the comparative ads are.

4. Comparative Advertising Effectiveness

In a research article Gorn & Weinberg (1984) concluded that Comparative Advertising was successful in reducing the perceived difference between the challenger and the brand leader across the some product categories. So it had a positive effect on perception. Similarly, Pechmann and Stewart (1988) suggested that for low share brands direct comparisons increased attention, memory and purchase intention, while for moderate share brands indirect comparison was successful and for high share brands non comparative ads served the purpose best. Goltlieb and Sare (1991) suggested that comparative advertisement is more persuasive than a non-comparative advertisement when higher involvement is activated and a source of higher credibility is included in the advertisement. a research by Demirdjian (1983) tested the sales effectiveness of Comparative Advertising, which is the ultimate aim of all the manufacturers. He used ball-point pens to study the purchase behavior and found out that comparative helpful in increasing sales.

However, Goodwin & Etgar (1980) explored that comparative ads had only a marginal or no effect on consumers. A “brand X” approach was more useful. Also, it is known that Counter argument is inversely related to the message acceptance, comparative ads with their direct and sometimes intrusive nature may have the potential to generate more counter arguments and thus hinder message acceptance. So, Stutts (1982) concluded that significantly more counter argument per person were generated by subjects exposed to a comparative ad than by those exposed to non-comparative ads and thus comparative ads may hinder message acceptance. A solution to counter argument problem was delivered which was when two-sided product claims were added to the

Comparative Advertising message, their interaction had a significant effect on claim acceptance. Two sided claim as it produces less counter arguing and greater credibility and claim acceptance. (Swinyard, 1981).

The literature review of above articles shows that Comparative Advertising is a complex and subjective process. It should be used with utmost care and detailed study of the consumers and market. The importance of preliminary research activities is emphasized by Goodwin and Etgar (1979) who gave steps for planning the promotion through comparative claims.

5. Conclusion

This review of literature helps in understanding the basic concept of comparative advertising, its various dimensions, the pros and cons attached to it. Firstly, the legal aspect covered the various laws and statute in India which are regulating the use of Comparative Advertising. While there has been an evolution in legal framework, there is a lot more still to be done. We also covered legalities in other countries. The need of studying the foreign countries' law to be able to survive in a global economy. It was observed that there was a wide difference from country to country such as in USA the view is very liberal as opposed to China or Japan. Also, European Union has allowed to it legally but the application of law differs in member countries. Along with that, a cross country study was taken up to know the impact of Comparative Advertising in different national cultures. Many of the cultural dimensions were taken from Hofstede's model of cultural dimensions and it was observed that there is a wide difference among the countries of the world. It was also observed that even though in some countries Comparative advertising is legal, it is still a taboo in the society such as Japan.

Secondly, the effects of Comparative Advertising were reviewed. Many studies were analyzed to test the effectiveness of Comparative Advertising on the audience under different situations. There were many **market implications** from this section:

- It was seen that Comparative Advertising had a positive effect on perception.
- Low share brands should prefer using direct comparisons, moderate share should use indirect and high share brands should use non Comparative Advertising.
- The study also stated that high source credibility and high involvement can increase the effectiveness of ads.
- It was analyzed that comparative ads produces greater counterargument which could hamper message acceptance.
- A solution to it was offered which was to use comparative advertising in combination with two sided claims, which proved to be most effective.

6. Further scope of study

This study was limited to only few variable of Comparative Advertising. More variables can be studied further. The paper is not comprehensive and subject to more detailed study. The areas that could be covered in future research can be the study of market segments and the factors that would help in knowing the segment to be targeted, so that Comparative Advertising effectiveness could be guaranteed. The segments based on income, education, age, gender etc. can also be studied in further study. The cross culture analysis can also be taken further to other dimensions of national cultures.

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