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Towards a Statutory Framework for Comparative Advertising in India: A Call for Legal Reform

Mr. Kushal Ashishbhai Shah[1], Prof. Dr. Grishma Bhavsar[2]

[1]Research Scholar, Faculty of Law, GLS University
[2]Assistant Professor, Faculty of Law, GLS University

Abstract
Advertisement plays a significant role in promoting traders' products creating consumer awareness. In India, Traders adapts two Primary Methods of advertising to attract consumers i.e. Traditional Advertisement and Comparative Advertisement. In traditional advertisement the traders appeal to the emotions of consumers by highlighting the quality and features of their own product. In contrast comparative advertisement involves the use of rival's product in the advertisement to claim superior of one's own goods often without any scientific evidence to substantiate such claim unlike United States, which has a statutory regulatory authority such as Federal Trade Commission to control, misleading or disparaging advertisement. India lacks such a statutory body instead the Advertising Standard Council of India (ASCI) performs a recommend and self-regulatory role in this regards. After the repeal of Monopolies and Restrictive Trade Practices Act, 1969 India no longer has a direct or specific statute governing disparagement and comparative advertisement. In this research paper I try to explore that, in the absence of a specific statute, how the judiciary interpret disparagement, honest practices and consumer confusion and suggests reforms to establish a more predictable and fair advertising regime. This research has adopted, the doctrinal method referring to books, journals, articles, case laws, newspapers and online links for the preparation of this research paper. To promote fair competition, protect the goodwill and reputation of businesses and ensure truthful transparent advertisement there is an urgent requirement for a clear and comprehensive legal frame work regulating comparative advertisement and product disparagement in India.

1. INTRODUCTION

In a comparative commercial environment advertising plays a critical role in shaping consumer perception and promoting brand identity. Among various advertising methods, comparative advertising has emerged as a persuasive strategy where a trader compares its goods or services with that of rival. Although such advertising fosters consumer awareness and healthy competition it often creates friction with trademark law and principles of unfair trade.

In India, following the adoption of the LPG (Liberalization Privatization and Globalization) policy in 1991, competition was encouraging and foreign investors were permitted to establish businesses in the country. Later to liberalize the economy and promote open competition the MRTP Act was repealed and the provisions relating to Unfair Trade Practices and Misleading Advertisement were incorporated into the consumer protection Act, 2019, whereas fair competition were reflected in the Trademarks Act, 1999 however no specific statutory provision was introduced to directly regulate disparagement and comparative advertising. The advertising standards council of India which issues ethical guidelines for advertisements, functions merely as self-regulatory body, with the increase in competition, traders began engaging in comparative advertising – showcasing their products as superior to rival products in terms of price, quality and features. As In Tata Press Ltd. V/s MTNL, 1995 the supreme court recognized this form of advertising as a part of the freedom of commercial speech protected under article 19(1)(a) of the constitution.

However, under the MRTP Act, 1969 which aimed to restrict monopolies and regulate trade practices, certain provisions introduced through the 1984 amendment provided protection against unfair trade practices and disparagement, while encouraging fair competition. After the repeal of Monopolies and Restrictive Trade Practices Act, 1969 India no longer has a direct or specific statute governing disparagement and comparative advertisement. These areas are currently regulated indirectly through the combined application of the Trade Marks Act, 1999 which governs Honest practices and Fair use, But Traders and advertisers often face confusion under the Trademarks Act, 1999 because Section 29(1)[1] prohibits unauthorized use of registered trademark, section 29(8)[2] deal with when a registered trademark is infringed by any advertising of that trademark if such advertiser try to take unfair advantage or harm the goodwill or reputation of the registered mark or try to detrimental or distinctive character of rivals registered marks then a registered trademark is infringed. Whereas section 30(1)[3] permits the use of another's registered trademark in honest commercial practices such as comparative advertising, the act does not clearly define the boundaries of honest practice, creating to uncertainty between permissible comparative advertisement and trademark infringement. Also the Trademarks act,1999 does not define the term person, therefore reference is often made to section 3(42) of the General Clauses Act, 1897, which includes Companies, associations, and bodies of individuals whether incorporate or not[4] even the term person does not defined in Constitution of India, 1950 but Article 367 of the Constitution does provide that the definitions contained in General Clause Act,1897 apply to the interpretation of the constitution. Consumer Protection Act, 2019 the act merely defines misleading advertisement and unfair trade practices under section 2(47) but fails to specify what constitutes disparagement in advertising, Common Law Principles and Advertising Standard Council of India Code, 1985 supported by judicial interpretations. Although Article 19(1)(a) of the Constitution of India protects only citizens and not to corporate entities, commercial speech – particularly comparative advertising derives indirect constitutional protection, as it serves the public's right to receive information. Due to these legal loopholes, traders of lesser known brands often exploit reputed trademarks in comparative advertisements, causing consumer confusion and unfairly benefiting the goodwill of established brands.

The study aims to contribute to the development of a comprehensive statutory mechanism and a strong regulatory framework that protect both consumer interests and brand integrity. The paper also identifies the major challenges in the existing framework and proposes recommendation for reform.

1.1 Advertising as A Legal Right

Advertisement and Trademark Act, 1999 are closely interconnected as advertising help a brand become more visible, recognizable and valuable in the eyes of consumers. The Trade Marks Act, 1999 and

[1] Trademarks Act,1999, Sec.29(1), No. 47, Acts of Parliament, 1999(India)
[2] Trademarks Act, Supra Note 3, Sec. 29(8)
[3] Trademarks Act, Supra Note 3, Section 30(1)
[4] General Clauses Act,1897, Sec. 3(42), No.10, Act of Parliament, 1897 (India)

advertising are interrelated as both seek to promote fair trade, brand identity and prevent consumer deception. While a trademark distinguishes a trader's goods or services, advertising serves as the medium that enhances its recognition, reputation and market value.

According to section 2(1) of the Consumer Protection Act, 2019 Advertisement means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents.[5]

In India advertising initially did not enjoy the protection of free speech, which is decided in Hamdard Dawakhana v. Union of India[6] the case arose due to the restrictions imposed by the Drugs and Magic Remedies (Objectionable and Actionable), Act, 1954, as a reasonable restriction to protect public health by banning misleading advertisements for purported miracle cures. In this case petitioner claim that this kind of advertisements are protected by fundamental rights of Constitution of India, so protection should be granted under Article 19(1)(a) i.e Freedom of Speech and Expression. In this case Supreme court verdict that article 19(1)(a) of the constitution of India does not provide protection to commercial speech, because the same has been issued by businessman. Afterward in the case of Tata Press v/s MTNL supreme court delivered a fresh judgment, in this case the court held that commercial speech is a part of the freedom of speech, and expression guaranteed under Article 19(1)(a) of Constitution. Which guarantees the fundamental right to freedom of speech and expression with reasonable restrictions under Article 19(2) of the constitution of India. Commercial speech cannot be denied the protection of Article 19(1)(a) of the constitution mere because the same are issued by businessman.[7]

1.2 Concept of Trademark

According to section 2(1)(zb) of the Trade Marks Act, 1999 trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include the shape of goods, their packaging and combination of colors.[8] Trademark are signs that identify goods or services. The concept of trademarks is not new. Traditionally ancient Greek and romans stamped or scripted and identifying symbol or name on various goods.[9] A trademark is not only a symbol of ownership or origin but also serves as a powerful tool for publicity and brand promotion. It helps the public identify the goods or services of one enterprise from those of others thereby becoming a marketing instrument. Trademark is inventing for the purpose of protect the identity of a business, promote fair trade, prevent confusion among consumers, and serve as an instrument of publicity and goodwill in the marketplace.

2. COMPARATIVE ADVERTISING: CONCEPT AND LEGALITY

Comparative advertising refers to an advertising practice in which a trader compares its product or service with that of another, highlighting superiority in features, price or quality. Such comparison may be explicit (naming the competitor) or implicit (referring to an unnamed rival through inference). The objective of comparative advertising is to allow consumers to make rational choices. In that Advertisers directly or indirectly compare its product or service to a competitor's, highlighting superior qualities of its own

[5] The consumer protection act, 2019, Act of Parliament, Act No. 35, August 9, 2019 (India)
[6] Hamdard Dawakhana (Wakf) Lal Kuan v. Union of India, AIR,1960, SC, 554
[7] Dr. J.N Pandey, Constitutional Law of India, Central Law Agency, Fifty Second Edition 2015, Page No. 197
[8] Dr. Jyoti Rattan, Trade Marks Law, Bharat Publication, First Edition 2021, Page No. 15
[9] P. Narayanan Law of copyright and Industrial Design 23 (Eastern Law House, Lucknow, 4th edition,2002)

offering. The method of comparative advertisement in India become more widely adopted with certain restrictions i.e Comparison allowed but Disparagement are not allowed[10], Misleading Comparison are not allowed[11], As per Trade Marks Act, 1999 Advertisers can use another's trademark in own advertisement for the purpose of comparison if the use is Honest, fair and not detrimental to the competitors but as per consumer protection act, 2019 section 2(47) Unfair Trade Practices are not allowed, confusing and deceptive ads are not allowed, Puffery allowed but not when it crosses into disparagement[12]. In India there is no specific statutory definition of comparative advertisement in any single law. comparative advertising is allowed if it does not mislead consumers or disparage the rival's trademark[13], According to famous case Reckitt and colman of India Ltd. V/s M.P Ramchandran & Anr., 1999 the court held that comparative advertisement is only allow when it does not disparage the rival's product[14] However the concept has been recognized, and evolved through judicial interpretation and statutory implications mainly under the Trade Marks Act, 1999, Consumer Protection Act, 2019, Constitutional of India and Code of Advertising Standard Council of India.

2.1 Disparagement in Comparative Advertisement

Disparagement means with the intention to harm rival's goodwill or cause financial loss to make a false, misleading or negative statement about rival's or his products, services or business reputation. In simple term disparagement means when a trader or manufacturer criticizes a rival's product unfairly or dishonestly especially in a way that damage their reputation. According to Monopoly and Restrictive Trade Practices Act, 1969 any disparagement or false comparison was treated as an unfair trade practice under section 36(A)(x) (This section is inserted in 1984). A trader or manufacturer is allowed to puff up his goods but he cannot say that the goods of his rival is bad. As evidenced in the case of Reckitt & colman of India Ltd. V. Kiwi T.T.K Ltd. (1996)[15] where in the court held that the defendant was disparaging the goods of the plaintiff and was told to restrain from advertising the competitors product in disparaging manner. Thus from the above analysis it can be observed that any such disparagement of comparative advertisement is reviewed and was told to restrain from advertising the competitors product in a disparaging manner.

2.2 When Comparative Advertisement is considered to Trademark Infringement

When a registered trademark is used without the authority of its owner for monetary purposes or to gain a separate reputation or degrade the goodwill of rival's in the market, it amounts to trademark infringement. According to section 29(8) of Trademark Act, 1999 A registered trademark is infringed by any advertising of that trademark if such advertising takes unfair advantage of and is contrary to honest practices in industrial or commercial matters or detrimental to its distinctive character or is against the reputation of trademark.[16] Comparative Advertisements may not be considered trademark infringement if they do not harm any other brand's reputation or disparage their products to gain any form of unfair advantage in the market.[17] Disparagement plays a crucial role in transforming comparative advertisement into trademark infringement. In case of HUL v/s Sabamed the Bombay high court verdict that a trader can advertise about

[10] Reckitt & Colman v. Kiwi TTK Ltd.,1996, P.L.R., 29 (Del)
[11] Pepsi co. v. Hindustan Coca Cola, 2003(27) PTC Del, 305(Del)
[12] Reckitt Benckiser v. HUL, 2014, SCC online Del 314
[13] Supra Note 11
[14] Reckitt & Colman of India Ltd. v/s M.P Ramchandran & Anr. 1999(19), PTC,741(Cal)
[15] Supra Note 9
[16] Supra Note 13, Page No. 120
[17] Law firm in India, Comparative Advertising and Trademark Infringement, India Law Office, http://www.indialawoffices.com/legal-articles/comparative-advertising-and-trademark-infringement, June 22, 2023

his own goods but trader cannot disparage the goods of another because due to this kind of disparagement effects on the rival's goodwill it constitutes trademark infringement.[18]

3. LEGAL POSITION IN INDIA

India does not have a dedicated statute governing comparative advertising. Instead its legality is determined through a combination of statutes and judicial interpretation primarily under:

3.1 The Trademark act, 1999

The Trademarks Act, 1999 was enacted to modernize and consolidate trademark law in India it main purpose is to protect Trademarks, prevent misuse and promote honest practices and comparison. Section 29(1) provides that a person shall not use another mark without his permission, this provision is making a restriction on comparative advertisement, any person cannot compare its product with another's product via advertising. Section 29(8) deal with that when a registered trademark is infringed by any advertising of that trademark if such advertiser tries to take unfair advantage or harm the goodwill or reputation of the registered mark or try to detrimental or distinctive character of rivals registered marks then a registered trademark is infringed. section 30(1) which deal with that nothing in section 29 shall be construed as preventing the use of a registered trademark by any person or proprietor can use another trademark for the purpose of identifying the goods with a proprietor but intention behind that kind of use is that honest, fair and not detrimental to the goods.[19]

3.2 The Consumer Protection Act, 2019

The consumer protection framework ensures that advertisement is truthful, fair and not misleading. It protects consumers from unfair trade practices, including false or deceptive comparative advertising. It promotes consumer awareness and health competition. Thus consumer protection ensures that the right to information is upheld while preventing misleading or disparaging comparisons. As per consumer protection act consumer means that any kind of person i.e individual or a firm whether registered or not or a Hindu Undivided Family or a co – operative society or an association of persons whether registered or not or any corporation, company or a body of individuals whether incorporated or not or any artificial judicial person.[20] That kind of person who buy or hire a goods or services via online or offline mode that kind of all person included in definition of consumer. Section 2(47) of the consumer protection act,2019 any act or omission that misleads consumers through false representation of goods or services amount to an unfair trade practice. Furthermore According to Consumer Protection Act, 2019 section 2(9) defines a misleading advertisement as one that falsely describes or misrepresents the nature, quality or value of goods or services, therefore failure to provide accurate and complete information regarding the essential characteristics of product such as its quality, quantity, price, potency, purity and standards – constitutes a violation of statutory duties imposed on advertisers.

3.3 Torts Law

Comparative advertising becomes actionable when it crosses the line from comparison to defamation and disparagement. In the absence of trademark infringement an aggrieved party may seek remedy under the common law tort to disparage or defamation wherein any false or malicious statement made to injure the reputation of another's goods constitutes a civil wrong. Torts law plays a vital role in protecting the

[18] Shilpa Patil, Case analysis:HUL v/s Sebamed, ipleaders, http://blog.ipleaders.in/case-analysis-hul-v-sebamed/october22,2021
[19] Supra Note 10, Page No. 122
[20] The Consumer Protection Act, Act No. 35, Act of Parliament, 2019

goodwill and reputation of a competitor's product through the doctrines of defamation and disparagement. It is branch of common law, developed through judicial precedents rather than legislation. While defamation safeguards personal or corporate regulation, disparagement protects commercial reputation form false or malicious statements about goods or services. Defamation and disparagement both are tortious wrongs and actionable when false statements cause damage to reputation or goodwill.[21] Comparative advertising must be based on truthful representation any false or misleading claim amounts to disparagement, disparaging a rival's goods is a civil wrong under tort law. And injunction can be granted.[22]

3.4 Self regulatory codes notably the advertising standards council of India (ASCI) code, 1985

It is a self-regulating voluntary organization of the India advertising industry. It was established for protecting the interests of the consumers while observing and guiding the commercial communications. ASCI has adopted a code for self-regulation which applies to all involved in the commissioning, creation, placement or publishing of advertisements to scrutinize advertising in India. Chapter 4 of the code deals with the form an manner of comparative advertising.[23] ASCI regulates advertisements to ensure they are truthful and fair. It allows comparative advertisements to ensure they are truthful and fair. It allows comparative advertising only if the comparison is honest, factual and not misleading. Advertisements must not disparage or defame competitors. Under the ASCI code, any unfair or false comparison violating consumer trust can be acted upon, promoting fair competition and consumer protection in advertising.

3.5 Constitution of India, 1950 and It's Applicability to Comparative Advertisement.

In India advertisement is considered a form of commercial speech and expression and is protected under Articles 19(1)(a) of the Constitution of India, which guarantees the fundamental right to freedom of speech and expression with reasonable restrictions under Article 19(2) of the Constitution of India.[24] Article 19(1)(g) of Constitution of India, grants citizens the fundamental right to practice any profession or to carry on any occupation, trade or business. It's protect the fair use of trademarks and comparative advertising as part of one's trade freedom but this freedom suspended where it infringed a trademark law.

3.6 Comparative Advertisement and Legal Position in Other Countries

In United States, New Zealand, Australia, United Kingdom, European Union, and Canada allowed comparative advertisements and it's constitute a fair use with certain restrictions[25] but To maintain market harmony and prevent unfair competition in China comparative advertisements are not allowed, there are no direct comparisons made with another advertisers.[26]

3.7 Comparison between Trademarks Act, 1999 (India) and Lanham Act, 1946 (United States)

The comparative legal framework governing advertising in the U.S and India highlights convergence and divergence in balancing free commercial expression and protection of brand reputation. The United states through section 43(a) of the Lanham act, 1946 adopts a liberal approach encouraging truthful comparative

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[21] Dabur India v. Colortek Meghalaya Pvt. Ltd., 2010 (44)PTC, 88 (Del)
[22] HUL v. Reckitt Benckiser India Ltd., 2014 (57), PTC, 495, (Del)
[23] Sudarshan Thapa, Laws Governing Comparative Advertisement, IPleaders, Law Governing Comparative Advertisement in India – ipleaders, http://share.google/ew3xmbu0GsEdl65SU, March 7, 2018.
[24] Tata press v/s MTNL, 1995 (5), SCC, 139.
[25] Ashok R. Patil and Anita A. Patil, International Legal Framework on Comparative advertising inEuropean Union, United States and India – A Contemplative Comparative Study, International Journal on Consumer Law and Practice, 2018(6), Article 5
[26] Arendse Huld, Chinese Advertising Law: Market Regulator Issues Guidelines on the Use of Absolute Terms, China Brifening, http://www.china-briefing.com/news/advertising-in-guidelines-on-use-of-absolute-terms/, March 23, 2023.

advertising as means of consumer awareness and market competition. The federal Trade commission supports such advertising provided it is non deprive and evidence based.

In contrast India follows a restrictive and reputation centric approach though section 30(1) of the trademarks act, 1999 allows honest comparative use section 29(8) and the concept of disparagement in India has evolved entirely through judicial interpretation under common law principles of tort. Courts have relied on case precedents to determine what constitutes disparagement. The ASCI code remains nonbinding and there is no specific legislation defending comparative advertising, leading to judicial inconsistency.

4. Judicial Interpretations

Reckitt & Colman of India Ltd. v/s M.P Ramchandran and Anr.[27]

In this case Plaintiff and defendant had a business of same product, in compare to defendant's product (Ujala) plaintiff product (Robin blue) was old and well-known in Indian market. The defendant compared it product with plaintiff product and claimed that Robin blue was inferior, outdated and wasteful while Ujala was superior and modern. Calcutta High court delivered a judgement that a trader is eligible to claim puffery of his own goods or service but in doing so he can't defame or disparage rival's product or services. The judgment also held that if any products is based on new product then a trader claim that this technology is superior from the existing product but he cannot claim that old product is bad than the existing product.

Dabur India Ltd. V/s Colgate Palmolive[28]

In this case Colgate produced an advertisement on the media where it was shown to have stopped the purchasing the tooth powder by detailing the ill effects of the plaintiff's product, also product's constancy was very similar to that of Dabur, the Delhi High court prevent to Colgate from broadcasting misleading comparative advertisements on Television against Dabur. The court observed that Puffery is allow but false statement is not allowed. Because without any scientific evidence trader cannot challenged a rival's product. it's possibility to bad impact on rival's product. Hence this case the court held that Colgate disparaged the goods and was granted injunction.

HUL v/s Reckitt Benckiser (India) Ltd.[29]

This case reaffirmed the need to assess comparative advertising from the viewpoint of the average consumer. The court noted that an ordinary person does not analyze every statement with legal precision therefore courts must consider the overall impression conveyed.

Pepsi co. inc. v/s Hindustan coca – cola Ltd.[30]

This case concerned pepsi's objection to coca – cola's commercial portraying pepsi drinkers as childish. The Delhi high court observed that a manufacturer is entitled to boast that his goods are the best but he cannot say that his competitor's goods are bad. The court concluded that the advertisement amounted to disparagement because it ridiculed the rival product rather than merely extolling its own.

Britannia v/s Unibic Biscuits India[31]

Unibic India launched the great day cookie in the market with the phrase "why have a Good Day, when You Can Have a Great Day. In this case Plaintiff claimed that the defendant directly disparagement of their

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[27] Reckitt & Colman of India Ltd. v/s M.P Ramchandran & Anr. 1996, P.T.C., 193, T 399
[28] Dabur India Ltd. v/s Colgate Palmolive India ltd., AIR 2005, Del., 102
[29] HUL v/s Reckitt Benckiser (India) Ltd., SCC online, 2014, Del, 4463
[30] Pepsi co. inc. v/s Hindustan Coca-cola Ltd.2001(21)P.T.C 722
[31] Britannia v. Unibic Biscuits India, MIPR 2008(3) 347

brand as well product. Banglore City Civil court granted an injunction to the defendant for disparaging the product. In this case court considered a three factors i.e the intent, the method in which the advertisement (story line) was promoted and the message that was delivered to the public[32]

5. LEGAL CHALLENGES IN THE REGULATION OF COMPARATIVE ADVERTISING

1. **Unclear legal boundaries**

Indian law prohibits the use of registered trademarks in advertising in India If it takes unfair advantage, misleads consumers or disparages a competitor's goods or trademarks as per the Trademark Act, 1999 section 29(8).
However, exceptions allow honest and limited use of competitors' trademarks for comparative advertising if not misleading or unfair.
Courts often struggle to distinguish between permissible puffery and unlawful disparagement or infringement, leading to inconsistent rulings and uncertainty for advertisers.

2. **Uniformity in Law**

Comparative advertising in India is governed by multiple laws including the Trade Marks Act,1999, consumer protection act,2019, Torts Law, General Clauses Act, 1897, Constitution of India, 1950 and self regulatory ASCI Code,1985 but there is single comprehensive statute dedicated solely to it.
This patchwork leads to overlaps and inconsistencies in interpretation and enforcement, complicating legal compliance for companies.
For instance sections under consumer protection laws address unfair trade practice including misleading comparison while ASCI enforces ethical advertising standards requiring comparisons to be factual substantiated and not misleading.

3. **Weak enforcement and non – binding self-regulation**

ASCI guidelines are advisory and not legally binding for all advertisers non members or digital only advertiser may fall outside its effective reach.
The CPA gives the central consumer protection authority powers but resource, jurisdiction and implementation issues persist.

4. **Inconsistent consumer protection and consumer awareness**

even where laws exist many consumers may not recognize when a comparative ad is misleading or infringing a trademark.
The speed of advertising may outpace regulatory response allowing harm before intervention.

5. **Claim first Justify later if Challenged**

Advertisers can make unverified comparative claims without pre approval and only if a complaint arises are they required to prove their claim. There is no pre-screening mechanism to verify claims before release.

6. **Need for statutory definitions and concept of Comparative advertisement, puffery and disparagement**

Comparative advertisement, puffery and disparagement are not defined in any statutes of India, however in the absence of clear legislation, when the judiciary creates law or guidelines, it may lead to breach of the separation of powers. So it is require that to incorporate definition and concept of comparative advertisement, puffery and disparagement.

7. **Lack of protection of genuine competitors in comparative advertising under trademark law.**

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[32] Debalina Chatterjee, Comparative Advertisement and Infringement of Trademarks, 2(6) white black legal 5, 11(2020) http://www.whiteblacklegal.co.in/wp-content/uploads/2021/vol-2-Issue-6-Debalina-Chatterjee.pdf.

The trademark law merely provides under which matters the comparative advertisement is allowed but there are no provisions like what amount to comparative advertisement, when it would lead to product disparagement or what remedy is to be given in case of product disparagement

6. SUGGESTIONS

There is a need for law to strengthen the legal framework on comparative advertising and trademark infringement in India, there is a need for clear statutory definition of terms kike comparative advertisement, honest practices, puffery and disparagement to reduce judicial ambiguity. A pre-screening or approval mechanisms for advertisements, to prevent misleading claims before they reach the public. Lastly promoting consumer awareness and ethical advertising standards will help ensure that comparative advertising remains a tool for fair competition rather than unfair brand disparagement.

7. CONCLUSION

It can be concluded by the above discussion that in the changing context of advertisements. There is a need for a statute with respect to comparative advertising as with widespread use of comparative advertising came many of the typical advertising abuses, which were also very vague. The most common type of abuses include: fake claims, where the advertisers claims that his/her product does something that the other product fails to do, product disparagement, where the advertiser unjustifiably attacks a competitor's product and false representation where the advertisement is misleading. The law needs to responds to these abuses in a number of ways and mere judicial pronouncements will not be enough.