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Authored By: Ms. Ishika Paruthi (Bachelor of Arts (Liberal Arts)
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Email Id: ishikaparuthi02@gmail.com.***



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ABSTRACT:

“Comparative advertising is an extremely important business tool until it is used rationally. When used correctly, it can allow your consumers to make informed decision about your purchase by showing the difference between two competing products and can ignite a friendly competition for the brands. On the other hand, it is one of the riskiest forms of advertisement in the legal sphere; if you (advertiser) do not follow the ethical code of conduct and the legal guidelines, it won't take time before you get into trouble with the Advertising Standards Council of India (ASCI). While advertisements are one of the best ways to reach your target audience about your product/service but for-profit purposes, many a times, companies use unlawful practices to damage the reputation of their competitors. Comparative advertisement can be further divided into two categories: puffery and denigration/disparagement. When a company makes a claim that their product is the best, it will influence people to buy it, this is puffery but when it crosses the limits of puffery and starts degrading another product to show themselves as superior, it leads to disparagement. This in turn can lead to defamation of the product/service of your competitor while misleading its customers!

Keeping disparagement and comparative advertisement in mind, Indian laws about the same are not as liberal as other countries like the States and the United Kingdom; their laws are comparatively liberal! While comparative advertising is not new there, the producers/advertisers are not allowed to make superlative claims about their product without providing ample evidence. Moreover, they can claim that their product is better than another brand only and only if they can make a reasonable claim about the same.

Keeping in mind, the array of brands that offer similar product/services to the consumers in India, allowing advertisers here to conduct similar practices would give the consumers a chance to pick up the better product which promotes healthy competition and reduces malpractices in the long run. “Comparative Advertisement is a relevant field of IPR which is gaining importance due to the competition between various traders existing in the market

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economy.” (IP leaders, 2020)¹. Keeping all these things in mind, this term paper would analyse the difference between disparagement and puffery by giving ample case laws as examples while elaborating upon the thin line between both and how that is on the verge of blurring if proper restrictions are not brought into place”.

I. INTRODUCTION:

I.1 IMPORTANT TERMS:

1. **Comparative Advertising:** According to Investopedia “*comparative advertising is a marketing strategy in which a company’s product or service is presented as a superior when compared to a competitor’s*”².
2. **Puffery:** The use of exaggerated statements to promote a product which can’t be verified objectively
3. **Disparagement:** The Merriam Webster dictionary describes disparagement as “*disparage implies depreciation by indirect means such as slighting or invidious comparison*”³
4. **ASCI:** The Advertising Standards Council of India is a voluntary – self regulatory organization that is committed to honest advertising and to fair competition in the market place⁴.

“Creativity may well be the last legal unfair competitive advantage we can take to run over the competition.” – Dave Trott.

¹ Asthana, S. (2020, February 14), *Analysis of Comparative Advertisement and Disparagement*, iPleaders, <https://blog.ipleaders.in/comparative-advertisement-disparagement/>.

² *Comparative Advertising*. (2020, April 1). Investopedia. <https://www.investopedia.com/terms/c/comparative-advertising.asp#:~:text=Comparative%20advertising%20is%20a%20marketing,to%20those%20of%20its%20competitor.>

³ *disparage*. (n.d.). The Merriam-Webster.Com Dictionary. <https://www.merriam-webster.com/dictionary/disparagement>.

⁴ *The Advertising Standards Council of India (ASCI) | Indian Broadcasting Foundation*. (n.d.). Indian Broadcasting Foundation. <https://www.ibfindia.com/advertising-standards-council-india-asci>.

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II. AN ANALYSIS OF COMPARATIVE ADVERTISEMENT AND DISPARAGEMENT WITH RESPECT TO INTELLECTUAL PROPERTY RIGHTS IN INDIA:

The battle between brands to prove themselves as the best in the market is very much real as well as very intense. And advertisements are the go – to tool for these brands to sustain in this competitive market. Today, every business needs visibility in the market and they use advertisements for the same but what happens when wanting to show a harmless message like “my product is better than yours” turns into a battle? This is what happens when mere puffery turns into disparagement in the world of comparative advertisement. There is a very thin line between both and it does not take a lot of time to skip over to the other side! To present yourself as the best, your USP needs to be the best; it is a very crucial factor and hence every business promotes its products very aggressively using an array of factors including their product being of the best quality, available at economical prices, added features, advanced technology and some businesses do the same while comparing their product to someone else’s to give more insight into how their product is better than the rest. This is not always the case; at times businesses go overboard with their comparisons and take the shape of product/service disparagement which is not permitted in the industry.

“Thus, in this era of cutthroat competition, it has become the need of an hour of every business to understand the nuances/laws relating to Comparative Advertising vis-a-vis Product Disparaging, because though the healthier practice of Comparative Advertising is permissible but in legal jurisdiction like India (or even UK, USA), Product Disparaging is not considered right and may lead to allegations in the nature of trademark infringement, disparagement and unfair trade practices and unfair competition etc” (R&P Legal)⁵.

⁵ Tandon, K. T. (n.d.). *RP-Legal | COMPARATIVE ADVERTISING AND PRODUCT DISPARAGING*. R&P Legal. <https://rplegalindia.com/blog-detail/7/COMPARATIVE-ADVERTISING-AND-PRODUCT-DISPARAGING>.

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II.I BRIEF BACKGROUND ABOUT THE STATUTES IN PLAY

HERE:

A few decades ago, the Indian market (*advertising companies*) looked down on the trend of comparative advertising but since India opened up to a much more global market in the 1990s, the level of competition increased and a rat race to stay in the competition for the longest period started. This competition fuelled a need to glorify and exaggerate one's products for their consumers through comparing them with that of other businesses. This took a turn for the worse when brand owners took to unfair tactics and practices to attract consumers which led to a complete change in the dynamics of advertising in the country. Now the Indian government wanted to safeguard the interest of both, the companies and the consumers and hence introduced the 'Monopolies and Restrictive Trade Practices Act of 1984' which was later replaced by the 'Competition Act of 2002'. As of right now, “*disparagement by advertising is governed by the Trade Marks Act, 1999 under Sections 29(8) and 30(1), which provide for infringement of a registered trademark by way of advertising. The Code of Self-regulation issued by the Advertising Standards Council of India as well as the Consumer Protection Act, 2019 provide alternate remedies*” (*Lexology, 2018*)⁶.

In our vast country, it is the task of the ASCI to deal with disputes related to advertisements and that includes comparative advertising gone wrong. It aims to achieve fair advertising practices by controlling the content of the advertisements out there. Comparative advertisement is a very relevant field under intellectual property rights; one that is gaining a lot of momentum now. Why? Because of the increased competition amongst an array of businesses that exist and the many more that are popping up every day in our market economy. Keeping all this in mind, one needs to remember and take into consideration the underlying intent of the commercial and bearing in mind that your advertisements should not denigrate or disparage the product of your competitors and should be ideal. Ideal how – one that enhances your market performance but

⁶ *Comparative advertising and disparagement.* (2018, October 3). Lexology.
<https://www.lexology.com/library/detail.aspx?g=c200e9b5-d6a9-4584-9e9d-01ede06d2f56>.

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also ensures protection of consumer interests and the intellectual property rights associated with the same.⁷

II.II WHEN DOES COMPARATIVE ADVERTISING TURN INTO DISPARAGEMENT?

As mentioned above, companies use comparison with other companies to depict themselves as the superior brand and this is called comparative advertising. An example in the Indian context we might be aware about is that of the German soap brand ‘Sebamed’. Its latest multi – media campaign in the Indian market is all about bold – comparative advertising. It took on none other than FMCG giant Hindustan Unilever – HUL and compared their soaps with the one produced by Sebamed with respect to their ph levels. Furthermore, it compared all ph levels to that of a cloth washing soap bar ‘Rin’. (*ET Brand Equity, 2021*)⁸ This is a play on the advertisement that Dove did about five years ago when it used litmus paper to compare its ph levels to that of ITC’s Vivel. When Dove did this comparison, it did not name the other competitor but gave away all the description which would allow the viewer to instantly understand what was being talked about here.

This time around, Dove alongside its sister brands Lux and Pears are on the receiving end of this litmus paper ph comparison. In their advertisements(s), Sebamed mention that their ph level is 5.5 which is perfect for your skin whereas the ph for Dove and Lux is 7 and 10 respectively which means it’s not healthy for human skin. The campaign title for their soap was *‘filmstars ken ahi, science ki suno’ (do not listen to the film stars, listen to science)* through which they threw shade at Lux which has always been associated with film stars! Sebamed backed all their advertisements with scientific facts but were served a notice by HUL

⁷ Tandon, K. T. (n.d.). *RP-Legal | COMPARATIVE ADVERTISING AND PRODUCT DISPARAGING*. R&P Legal. <https://rplegalindia.com/blog-detail/7/COMPARATIVE-ADVERTISING-AND-PRODUCT-DISPARAGING>.

⁸ Malvania, U., & BrandEquity, E. T. (2021, January 13). *Sebamed versus HUL: Could comparative advertising land Sebamed on a slippery slope?* ETBrandEquity.Com. <https://brandequity.economicstimes.indiatimes.com/news/advertising/sebamed-versus-hul-could-comparative-advertising-land-sebamed-on-a-slippery-slope/80229350>.

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that they were tarnishing the reputation of the HUL soaps. The case went to the Bombay High Court, the verdict of which was that Sebamed can continue to use this comparative advertising with HUL soaps (as long as they have science to back their claim) but has to remove the comparison with Rin bar. (*E4M, 2021*)⁹

When it came to a comparison with the Rin bar, that is when comparative advertising turned into disparagement for the HUL soaps and the Bombay HC told Sebamed to not do that. This is a classic case of the line between comparative advertisements and disparagement being so blurry that one doesn't even know when has that been crossed until they are served with a legal notice! Advertising today has a very crucial role to play in growth of a business because it allows any business to have a visual comparison between the business' coverage map and its leading competitors. Comparative advertisements are a valuable tool, no doubt about that but its misuse it what leads to disparagement!

Sebamed's advertisements were banned for a little while so did this comparison work in its favor? *Interbrand India's Managing Director, Mr. Ashish Mishra's* response to this was “*the answer may lie in an assessment of what works on the customer's world. It is a combination of the brand's strength on the key choice drivers. Engagement and experience built on insightful human truths. This is where plain and aggressive comparison may not be ticking the boxes. The new argument in its defence however could be the increased consumer awareness and their desire to use the available information to compare to make an informed choice*”. (*ET Brand Equity, 2021*)¹⁰ Moreover, the definition of comparative advertisements changed a little in India. In the early days of the pandemic, Burger King urged people to order from local businesses as they were affected a lot; this move didn't just grab eyeballs but also won the

⁹ Mansuri, M. (2021, January 12). *Sebamed vs HUL: Comparative advertising done right?* Indian Advertising Media & Marketing News – Exchange4media. <https://www.exchange4media.com/advertising-news/sebamed-vs-hul-comparative-advertising-done-right-110180.html>.

¹⁰ Malvania, U., & BrandEquity, E. T. (2021, January 13). *Sebamed versus HUL: Could comparative advertising land Sebamed on a slippery slope?* ETBrandEquity.Com. <https://brandequity.economicstimes.indiatimes.com/news/advertising/sebamed-versus-hul-could-comparative-advertising-land-sebamed-on-a-slippery-slope/80229350>.

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hearts of Indians. On the other hand, Lifebuoy urged people to wash hands with whatever soap they had at hand and in their advertisements, they also named a few of their competitors to promote the practice of washing hands and being safe above everything else. This form of comparative advertising is something we see very rarely but this is a perfect example of how companies adapt their comparison strategies for the greater good!

It can be argued that comparative advertisement can be supported as a form of free speech under Article 19 (1) (a) of the Indian constitution – freedom of speech but this freedom to speak your mind does not include defaming/disparaging anyone. Hence, it is not right to say that the business/advertisers have the rights and the liberty to disparage the product/service of their competitors under Article 19 (1) (a)¹¹.

II.III COMPARISON OF LEGAL PROVISIONS WITH RESPECT TO COMPARATIVE ADVERTISEMENT: A COMPARISON BETWEEN INDIA, UK AND THE USA:

The Indian law allows for comparative advertising but not for disparagement. The former is allowed to help consumers in knowing about the difference between two products by competitor businesses and making the right purchase; allows the consumers to make a sound and informed choice. **Our law does not allow when businesses jump the line and move from comparison to disparagement and has legal provisions with respect to the same:**

II.III.I INDIA:

II.III.I.I MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT OF 1984 (MRTP ACTS):

Although there is no specific statute in India that is formed solely for comparative advertising, the MRTP along with the Trademark Act of 1999 work hand in hand to give us a basic structure of what governs comparative advertisements. Section 36 (A) of the MRTP act lists an array of

¹¹ Legal Service India. (n.d.). *Constitution of India-Freedom of speech and expression*.
<https://www.legalserviceindia.com/legal/article-572-constitution-of-india-freedom-of-speech-and-expression.html>.

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actions that are considered ‘unfair trade practice’ that gives the consumers wrong facts which would lead them and would also lead to disparagement of goods/services/products.¹²

II.III.I.II TRADEMARK ACT OF 1999:

This act states that comparative advertisement is allowed but it comes with its own set of limitations related to unfair trade practices and the fact that you should avoid them altogether. Furthermore, it also states that if someone has a registered trademark, it can be infringed if another person/business uses the registered trademark as part of their trade name and packaging amongst others.

II.III.I.III SECTION 29 (8) OF THE TRADEMARK ACT OF 1999:

It gives situations where “*advertisement of trademark constitutes infringement and includes any advertisement contrary to honest practices in industrial and commercial matters; or is detrimental to its distinctive character, or is against the reputation of the mark*”. **It says:**

- a) “Takes unfair advantage of 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 trade mark”.

II.III.I.IV SECTION 30 (1) OF THE TRADEMARK ACT OF 1999:

This section of the trademark act allows comparative advertisements as an exception to the previous section {29 (1)} by mentioning that if the advertisement is in accordance with honest practices in the industrial and commercial matters which is not taking any unfair advantage or disparaging the character or repute of another trademark, would not constitute infringement and hence can be allowed by law. **It mentions the following:**

¹² Kumar, A. (n.d.). *COMPARATIVE ADVERTISEMENT IN INDIA, UK & US AND PRODUCT DISPARAGEMENT*. Manupatra. <http://docs.manupatra.in/newsline/articles/Upload/C7ABDE0F-D274-49C7-A257-C99077D0C680.pdf>.

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- a) “Nothing in section 29 shall be construed as preventing the use of a registered trade mark by any person for the purposes of identifying goods or services as those of the proprietor provided the use -
- b) is in accordance with honest practices in industrial or commercial matters, and
- c) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.”

II.III.I.V ASCI CODE FOR SELF-REGULATION IN ADVERTISING:

Under this code of ASCI, advertisements that contain comparisons with competitors/rival businesses are allowed in friendly competition subject to following requirements/pre-requisites:

- a) The feature that has to be compared with another brand should be made clear
- b) The comparison should be backed by facts and should be capable of authentication
- c) The comparison should not exaggerate or bestow “artificial leverage” on the advertiser to show themselves in a positive form as compared to the competitor
- d) The advertisement should not disparage/discredit the competitor’s product/service/advertisement

II.III.II UK:¹³

II.III.II.I EUROPEAN DIRECTIVE:

The United Kingdom like most of the European countries follows the European directive (2006/114/EC) issued on misleading and comparative advertising. This directive permits comparative advertising but also lays out a set of steps to prevent it from becoming disparagement. “EU directives 3 and 4 deal with the subject matter and needs to be kept in mind by the brands while initiating any comparative advertising campaign”.

II.III.II.II UK TRADEMARK ACTS OF 1994:

¹³ Kumar, A. (n.d.). *COMPARATIVE ADVERTISEMENT IN INDIA, UK & US AND PRODUCT DISPARAGEMENT*. Manupatra. <http://docs.manupatra.in/newsline/articles/Upload/C7ABDE0F-D274-49C7-A257-C99077D0C680.pdf>.

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Section 11 (2) of this act permits only fair comparisons of products. Furthermore, it also states that the comparison done between the trademark of the competitor should be honest and provide “*genuine indication of quality or price*”. If this happens, then a comparison is allowed.

II.III.II.III MISLEADING AND COMPARATIVE ADVERTISING

DIRECTIVE:

Comparative advertising is allowed under this directive as long as it abides with the rules and regulations of the MCD. Before you release an advertisement, you need to prove all claims you make in the advertisement and whether they can be backed by data.

II.III.II.IV ADVERTISING STANDARDS AUTHORITY (ASA):

This is a statutory body (like ASCI in India) that has the power and authority to enforce the limits when it comes to comparative advertising.

II.III.II.V EXAMPLE CASE: BRITISH AIRWAYS PLC VS.

RYANAIR LIMITED:

In this case, Ryanair used comparative advertising by creating a banner where they made a comparison of prices between their flights and that of British Airways and mentioned how the latter is five times costlier than their flights. This was a false allegation since British Airways is three time costlier and not five, this is why British Airways filed a complaint in the court of law saying that Ryanair infringed the trademark of British Airways. On the other hand, the Advertising Standards Authority (ASA) felt that the statement by Ryanair indeed makes a false offence against British Airways.

II.III.III USA:¹⁴

II.III.III.I TREATMENT OF COMPARATIVE ADVERTISING BY

FTC AND NAD:

¹⁴ Kumar, A. (n.d.). *COMPARATIVE ADVERTISEMENT IN INDIA, UK & US AND PRODUCT DISPARAGEMENT*. Manupatra. <http://docs.manupatra.in/newsline/articles/Upload/C7ABDE0F-D274-49C7-A257-C99077D0C680.pdf>.

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False advertising does not fall under the first amendment of the American constitution and hence is banned. The FTC and the NAD are hence the main regulatory bodies here that look into claims of disparagement and false comparative advertising. FTC is there to protect consumers from deceptive practices and promote healthy competition between businesses/brands.

II.III.III.II LANHAM ACT:

Section 43 (A) of the Lanham Act says;

“Section 43(a): False designations of origin, false descriptions, and dilution forbidden–“

- a) Using false description or providing misleading information.
- b) The information is likely to confuse the consumer or allow them to make mistakes or deceive them with respect to the origin, sponsorship, approval of goods or commercial activities
- c) If there is misrepresentation of the nature, characteristics, qualities, geographic origin of other person/business’ service/good under commercial advertising

II.III.III.III ANTI – TRUST LAWS:¹⁵

These laws are statutes developed by the government to protect the consumers from predatory business practices and to ensure fair competition. There are three anti – trust laws:

- a) **The Sherman Antitrust Act:** as a part of this act, you can’t monopolize any part of interstate commerce. Furthermore, you cannot have unlawful monopoly which would suppress its competition.
- b) **The Clayton Act:** this act was made to deny the merger and acquisition of companies which would lead to less competition but at the same time increase the prices of consumer. Anyone and everyone wanting a merger or acquisition above a certain limit need to notify the anti – trust division and the federal trade commission.
- c) **The Federal Trade Commission Act:** this prohibits unfair methods of competition with respect to interstate commerce but does not have any criminal penalties.

¹⁵ *Antitrust Laws And You.* (2022, March 21). The United States Department of Justice.
<https://www.justice.gov/atr/antitrust-laws-and-you>.

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II.III.III.IV EXAMPLE CASE: WENDY’S VS. MCDONALD’S

When Marvel’s Infinity War released, an array of brands turned the ending of the film (people turning to dust) and incorporated it into their advertisements. Their play had a comparison with McDonalds. Wendy’s advertisement shows a Big Mac by McDonalds turning into dust and fading away. The caption under the image was “Big Mac: I don’t feel so good” with the words “TFW yo beef’s still frozen” is what caught the attention of everyone. This was done to highlight how Wendy’s always uses fresh meat (here: beef) and here, they communicated this message through a comparison with McDonalds!¹⁶

II.IV CASE STUDIES IN THE INDIAN CONTEXT:

II.IV.I PEPSI CO. INC AND ORS VS. HINDUSTAN COCA COLA

LTD¹⁷:

In this case, Pepsi filed a suit against Coca – Cola for using their trademark wrongfully which led to disparagement for their product in the Coca – Cola advertisement. The advertisement is one where a few kids are asked what their favourite drink is and they all point to a drink the packaging of which is very similar to that of Pepsi. The protagonist of the advertisement says that they like Pepsi is too sweet and meant for kids whereas Coca – Cola is for grown – ups since it is strong! Some kids were made to taste the drink and they actually liked Coca – Cola. Furthermore, the other drink’s name was ‘Pappi’ written in a font similar to the one that Pepsi. Kids felt bad for choosing the wrong drink but the actor comments on the same saying that the kids chose the wrong drink and Coca Cola is better. The court ruled in the favour of Pepsi saying that this was indeed disparagement and depreciating the goodwill of Pepsi Co. Inc for the trademark infringement by the defendant.

¹⁶ Bond, C. (2021, November 26). *9 Comparative Advertising Examples to Help You Get Ahead*. WordStream. <https://www.wordstream.com/blog/ws/2020/01/13/comparative-advertising>.

¹⁷ *Pepsi Co., Inc. & Others v/s Hindustan Coca Cola Ltd. & Another*. (2021, November 29). WayLegal. <https://waylegals.com/pepsi-co-inc-others-v-s-hindustan-coca-cola-ltd-another/>.

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II.IV.II HINDUSTAN UNILEVER LIMITED V. GUJARAT COOPERATIVE MILK MARKETING FEDERATION AND OTHERS¹⁸:

This case was brought to court based on two advertisements launched by Amul wherein they mentioned that their products (here: ice – cream) use real milk. The advertisement had a tagline, “Amul is real milk, Real ice cream” and the plaintiff filed a suit under “generic disparagement/slander of goods” against AMUL. This case went to the Bombay High Court and court put a restraining order on all of Amul’s advertisements about their ice – creams. The court ruled against Amul and said that these advertisements were indeed disparaging because the entire category of ice – cream including Gujarat Cooperative’s ice – creams were looked down upon. Furthermore, the court also said that Amul was spreading wrong information through this advertisement which led to confusion for the customers. *“After this judgement, the courts held that the law was laid down on comparative advertisements by engaging in comparative representations cannot in any manner, disparage or defame the goods of his rival. Puffing, in the traditional view is that puffery can be done to any extent as long as it does not cross the line”.* (IP Leaders, 2020)

II.IV.III HORLICKS LTD. AND ANR. VS. HEINZ INDIA PRIVATE LIMITED¹⁹:

This case was based on an advertisement in ‘The Telegraph’ which showed a comparison between Horlicks and Complan. Sounds like a harmless comparison but it was not; the advertisement depicted that *“One Cup of Complan equals two cups of Horlicks”*. Furthermore, it also mentioned that one cup of Complan gives 5.94 gm of protein while two cups of Horlicks give the same amount of protein. Horlicks filed a case saying that is a clear case of product

¹⁸ Verma, A. (2020, September 22). *Comparative advertisement resulting in trademark infringement*. iPleaders. <https://blog.ipleaders.in/comparative-advertisement-resulting-trademark-infringement/>.

¹⁹ Mishra, U. K. (2019, April 16). *Horlicks Ltd. v. Heinz India: Delhi High Court Held That Comparative Advertising By Use Of Competitor*. Mondaq. <https://www.mondaq.com/india/advertising-marketing-branding/799574/horlicks-ltd-v-heinz-india-delhi-high-court-held-that-comparative-advertising-by-use-of-competitor39s-mark-allowed>.

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disparagement by Complian. The court kept the judgement passed in Havells India Ltd. & Anr vs. Amritanshu Khaitan & Ors, that said when it comes to comparative advertisement, disparagement is bound to be there till some extent which is legal and permissible as long as it is not misleading. It also took into consideration another judgement made in the Colgate Palmolive Company & Anr. Hindustan Uniliver Ltd, case which mentioned that comparison which are unfavourable to one’s competitors do not mean being dishonest. Again, disparagement is implicit till a certain extent but only till the comparison is in the form of puffery. If that is there, no legal case can be filed. Now the court ruled in the favour of Complian. Moreover, the “*contention of the plaintiff regarding the serving size is prima facie incorrect as the defendants have not altered the same since the year 1934. The defendant is not obliged to compare all parameters*”. (Mondaq, 2019)

III. CONCLUSION:

In comparative advertisement, there is a certain degree of comparison that is acceptable which is called puffery which allows the brand/business to compare but not show the product/service of other company in a negative light. This means there would be no actionable claim against the same. If a brand shows its competitors product/service in a negative light that could lead to misleading advertisement.

Any advertisement becomes misleading when it provides false information. **According to the European trademark decision in Lidl SNC v Vierzon Distribution [SA [2011] E.T.M.R.], a misleading advertisement should satisfy two essential elements:**

- a) “The misleading advertising must deceive or have the potential to deceive the persons to whom it is addressed to; and
- b) as a consequence of its deceptive nature, the misleading advertising must be likely to affect the economic behaviour of the persons to whom it is addressed or harm a competitor”.²⁰

²⁰ Obhan&Associates. (2021, December 15). *COMPARATIVE ADVERTISING AND PRODUCT DISPARAGEMENT: HORLICKS VS. HEINZ*. Obhan & Associates,

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Now, in comparative advertising, advertisers tend to pick out one specific feature of the rival and throw that under the bus but that does not mean that only one aspect can be picked. There are no rules or regulations about the minimum number of parameters that can be compared when it comes to comparative advertisement and also, there is no law to disclose each and every factor in the comparison that you make. Lastly, the law allows comparative advertising as long as the comparison you make is ‘honest’; the honesty varies but here it meant something being seen as honest by the members of a reasonable and rationale audience. Brands/businesses should be careful to not cross the line between puffery and disparagement as it can and will lead to legal problem that you have created for yourself!

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