

COMPARATIVE ADVERTISEMENTS IN THE BUSINESS WORLD: NEED FOR INTERPLAY OF TRADEMARK LAW, CONSUMER LAW AND COMPETITION LAW*

İŞ DÜNYASINDA KARŞILAŞTIRMALI REKLAMLAR: MARKA HUKUKU VE REKABET HUKUKU ETKİLEŞİMİ İHTİYACINI BERABERİNDE GETİRMEK

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ABSTRACT

Comparative advertisements also known as disparaging advertisements are regulated for the purpose of ensuring that nobody should negatively portray or present the competitors goods, and services or image and reputation in the business world. Though trademarks serve the purpose of identifying, representing and also advertising the brand of the business, business world often aims to reach out to the consumer through audiovisual means such as advertisements. Audiovisual advertisements would attract and influence the consumers irrespective of their status. Probably advertisement is the best mode of representing the business and also in having great impact on the consumers mind on their franchise of goods and services. It has been observed in the business world that in advertisements alongside projecting the features of their goods and services, business enterprises are tending to negatively portray, wrongly project, unscientifically compare and comment on the goods and services of rival business. Such practices are not only anti-competitive but they also damage the good will and the reputation of the rival business by wrongly influencing the consumer and their choices. In such cases, there is a need to effectively implement the provisions of trademark law, competition law and consumer law to curb the menace of disparaging or comparative advertisements. This paper focuses on the regulation of comparative advertisements, the need for bringing in the effective interplay of the above-mentioned laws. It is felt that such interplay is essential for ensuring fair competition in the market, free choices to be made by the consumers and also for maintaining the brand reputation of the business enterprises for the greater benefit of the economy.

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I. INTRODUCTION

With the liberalization and globalization of the Indian economy, firms have been aggressively and vigorously promoting their products and services. In a comparative environment every representation of a product or service is about what 'others are not.' These practices raise questions about truthfulness and fairness of representation of products and services.¹ Advertisements shall essentially describe the features, utilities of the products and services of the entrepreneur. At times, advertisements involve superlative statements, proliferation and exaggeration of facts about the goods and services. Sometimes, it involves comparing the features of rival products and services in a direct or indirect way. Sometimes often advertisements are involving the acts of negative comparison of goods and services. Such comparison where an advertisement² tends to create a bad image of the rival entrepreneur by crossing the extreme limits of trade practices, amounts to disparaging of attempting to damage the brand image and reputation of the rival entrepreneur. Advertisements are allowed and encouraged for promoting once business is in a fair and fruitful way. One is allowed to highlight the features, utilities and specialties of the products in advertisement. There can be comparison of truth and established facts also in a fair and justified way. But can there be highlighting of negative features of the rival products, can there be a comparison in such a way to damage the reputation and brand image of the rival products and services? They are moot questions.

II. WHAT IS COMPARATIVE ADVERTISEMENT?

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.³ Comparative advertising is advertising where one party advertises his goods or services by com-

paring them with the goods or services of another party. Such other party is usually his competitor or the market leader of that good or service. The comparison is made with a view towards increasing the sales of the advertiser, either by suggesting that the advertiser's product is of the same or a better quality to that of the compared product or by denigrating the quality of the compared product.⁴

The term 'comparative advertising' refers to any form of advertising in which a trademark owner attempts to enjoy pecuniary benefits from a comparison between his product, service, or brand and that of a competitor. Comparative claims may vary in nature. They may explicitly name a competitor or implicitly refer to him.⁵ They may either emphasize the similarities or the differences between the products. They may also state that the advertised product is 'better than' or 'as good as' the competitor's.⁶ While comparative advertising was initially restricted to 'puffery'; where a trader list facts about the product, or makes vague claims which cannot be proved or disproved some traders, in the name of comparative advertising, have started 'disparaging' competitors' goods, forcing the law to intervene. Puffery and disparagement can therefore be considered as the two fundamental facets of comparative advertising.⁷

Comparative advertising is a widely used form of commercial advertising in many countries. This type of advertising intends to influence consumer behavior by comparing the features of the advertiser's product with that of the competitor's product. Comparative claims are variable in nature. They may explicitly name a competitor or implicitly refer to him. They may emphasize the similarities (positive comparisons) or the differences (negative comparisons) between the products. They may state that the advertised product is "better than" (superiority claims) or "as good as" the competitor's (equivalence or parity claims). The aim behind this concept is to allow honest (i.e. not misleading) comparison of the factors of one trader's products with those of another.

1 Akhileswar Pathak, 2005, Comparative advertising in India: Need to strengthen regulation, Volume: 30, Number: 1, Janaury-March, Vikalpa.

2 See: Rashi Sharaf and Yamini Das, 2008, Comparative advertising laws, Legal Services.com, February, <Legalservices.com>, last visited 20-11-2015.

3 Sudeep Chatterjee and Archana Sahadeva, Comparative advertising: An overview, World Intellectual Property Review, 01-09-2013, last visited 18-11-2015.

4 Rashi Sharaf and Yamini Das, 2008, Comparative advertising laws, Legal Services.com, February, <Legalservices.com>, last visited 20-11-2015.

5 Parth Gokhale and Shriyani Datta, 2011 Comparative advertisements in India: Evolving a regulatory framework, 4 NUJS Law Review, 131, Janaury-March.

6 Charlotte J. Romano, (2004-05). Comparative Advertising in the United States and France, 25 NW. J. INT'L L. & BUS. 371.

7 Sudeep Chatterjee and Archana Sahadeva, Comparative advertising: An overview, World Intellectual Property Review, <<http://www.worldipreview.com/article/comparative-advertising-an-overview>> last visited 18-02-2016.

er; such a comparison will inevitably involve the use of the trade marks associated with the products in question. In the absence of provisions controlling this, such use could constitute trademark infringement.⁸ The holder of a trademark has the exclusive right to use his trademark to identify the products or services, which is used by advertiser in comparative advertising, in order to identify the goods or services of a competitor by making reference to a trademark of the proprietor.

III. THE TRADEMARK ACT, 1999⁹

The Act justifies comparative advertising through authorizing the use of a registered trademark for the purpose of identifying goods or services of the competitor provided that such use in accordance with the honest and fair trade practices. Perhaps, the Section 29(8) of Act¹⁰ says that; a registered trade mark¹¹ is infringed by any advertising of that trade mark if such advertising:

- (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.

While, the Section 30 (1) of Act¹² justifies comparative advertisement while saying that nothing in section 29 shall be construed as preventing the use of a registered trademark by any person for the purposes of identifying goods or services as those of the proprietor provided the use

- (a) is in accordance with 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 trade mark.

⁸ Rashi Sharaf and Yamini Das, February, 2008, Comparative advertising laws, Legal Services.com, <Legalservices.com>, Last visited 20-11-2015.

⁹ The trademarks Act of 1958 was replaced by the new trademarks Act in 1999 which came into being in 2003.

¹⁰ See: Section 29(8) of the trademarks Act, 1999

¹¹ See generally: Sreenivasulu NS, 2013, Law relating to intellectual property, Publications, Bloomington, Indiana, USA, First Edition, Penguin-Partridge.

¹² Section: 30 (1) of the Trademarks Act, 1999.

IV. ADVERTISING STANDARDS COUNCIL OF INDIA

The Council¹³ has specified the certain norms or guidelines which should be kept in mind while promoting their goods through ads in its Code of Conduct.¹⁴ The guidelines states as follows:

- The producer must only make honest representation in the advertisements; stating about the features of their products or services.
- The advertisements must not be offensive in any way to the competitors in the market and the general public.
- Advertisements must not be used for the promotions of products, hazardous or harmful to society.
- Advertisements must not be harmful to people particularly minors and unacceptable to society at large.
- Advertisements must not in any way hamper free and fair competition in the market.
- Advertisements must not damage and hamper the reputation of the competitors in the market.

V. CONSUMER LAW

The Consumer protection Resolution of UN General Assembly narrates on Elaboration and strengthening of consumer policy frameworks across the globe. It also recommends for the adoption of code of conduct and ethical practices by businessman to ensure protection of consumer interest and welfare. Perhaps, the consumer law intends to protect consumer interest against unfair means of trade including misleading advertisements/comparative advertisements/unfair comparison and anti-competitive trade. The consumer protection Act¹⁵ states:

- a. There shall be protection against misleading practices of marketing including the use of trademarks representing wrong goods.
- b. Rights against misrepresentation of goods and

¹³ See: Parth Gokhale and Shriyani Datta, Janaury-March, 2011 Comparative advertisements in India: Evolving a regulatory framework, 4 NUJS Law Review, 131.

¹⁴ Chapter: IV of the Code of Conduct for Advertisements issued in 1985.

¹⁵ The Consumer Protection Act, 1986.

- misleading practices of businessmen.
- c. Consumers have right to know about the quality, potency and standard of the goods without any confusion
 - d. Consumer rights shall be assured against unfair trade practices 16 (Section: 2 (1)r) including wrong use of trademarks
 - e. In cases of wrongful use of trademarks and confusion not only the original owner of the trademark has got remedies but the consumer as well

VI. COMPETITION LAW

The competition law¹⁷ intends to regulate competition by preventing unfair practices, anti-competitive practices and unfair comparison including unfair means in advertisements.¹⁸ It is intended to regulate anti-trade. Anti-competitive and unfair trade practices.¹⁹

- Intends to ensure free and fair trade and commercial services in the business world
- Any commercial practices having tendency to hamper fair competition in the market are prohibited
- Any commercial practices having the tendency to take undue advantage of the good will and reputation of the competition are not allowed
- Any commercial practices having the tendency to harm the reputation and good will of the competitors in the business world are not allowed

The quasi judicial body under the act namely the Competition Commission of India Takes cognizance of any dishonest practices, anti-trade practices and anti-competitive practices including comparative advertisements which would damage the reputation of the competitor and detrimentally affect free competition in the market. Earlier under the MRTP

Act,²⁰ the Monopolies Restrictive Trade Practices²¹ (MRTP) Commission²² used to take cognizance of such issues as MRTP commission is replaced by the Competition Commission of India, it is bestowed the same power of acting on the comparative advertisements.

VII. WHAT IS THE BASIC PURPOSE OF TRADEMARK AND THE ADVERTISEMENTS?

To understand the background and nature of comparative advertisements it is quite essential to analyze the basic purpose of trademarks and basic purpose behind advertisements in the business world. Usually trademark as well the advertisements are used to reach out to the customers while representing and identifying particular set of goods and services originating from specific source with represented and guaranteed quality. In *Andrew vs. Keuhnrich*²³ it was viewed that; trademark identifies the product and its origin, guarantees its unchanged quality, advertises the products, and functions as the symbol of goodwill of business. Trademark is a tool to represent and advertise the products. Therefore the basic purpose of trademark and advertisements is to represent, identity the goods and services while reaching out to the consumers.

VIII. COMPARATIVE ADVERTISEMENTS AND JUDICIAL RESPONSE

The issue of comparative advertisement raises concerns; firstly, it damages the brand image and goodwill of the trademark and its owner. Secondly, it violated the standard code of conduct as prescribed by the Advertising Standard Council of India. Thirdly, it causes confusion and ambiguity in the minds of the consumers with reference to the performance and use of the competitor's products or services. Fourthly, it amounts to unfair trade and anti-competitive practice of projecting the competitor negatively by damaging their reputation and utility in the market. There are number of such situations the

16 See: Rashi Sharaf and Yamini Das, February, 2008, Comparative advertising laws, Legal Services.com, <Legalservices.com>, last visited 20-11-2015.

17 The Competition Act in India was enacted in the year 2002 replacing the Monopolies Restrictive Trade Practices Act of 196.

18 See: Rashi Sharaf and Yamini Das, February, 2008, Comparative advertising laws, Legal Services.com, <Legalservices.com>, last visited 20-11-2015.

19 See: Section: 66 of the Act.

20 The MRTP Act, 1969 Was intended to prohibit anti-trade practices under Section: 36A and monopolies in the business world.

21 Akhileswar Pathak, Janaury-March, 2005, Comparative advertising in India: Need to strengthen regulation, Vikalpa, Volume: 30, Number: 1, p.

22 MRTP commission was replaced by the Competition Commission of India in the year 2002 through the Competition Act of 2002

23 (1913) 30 RPC 677.

Indian law courts were asked to respond to. While addressing such issues the law courts in India have not only culled out common law principles but as well used the provision of trademark law, consumer law and competition law in a fruitful and effective way. Such kind of use of all the three laws in the case of regulation of comparative advertisements have brought into existence the interplay and interfaces of the above mentioned three legislations towards objective and effective implementation of law in harmonization while bringing in rationalization. In *Reckitt & Colman V. Kiwi Ltd*²⁴ the issue of comparative advertisements and their disparaging effect came for the discussion before the court of law. Plaintiff and defendant are manufactures of shoe polices. Defendant in their advertisement compared their products with other products while projecting their products to be better than the compared ones. Plaintiff contends that defendant in their advertisement has shown the image of their shoe police and the container to indicate the customers that defendant's product is better than the plaintiffs by disparaging the plaintiff's product. Defendants argued that they have not shown the actual image, name or container of the plaintiffs rather in their advertisement. The court stated; one can advertise their products to reach out to the consumers. In doing so they can describe the features and benefits of their products. But they cannot comment on the other products in the market in a negative way as it amounts disparaging²⁵ or damaging the image of the other products and its business in the minds of the consumers.

IX. DIRECT COMPARISON AND COMMENT

In *Reckitt & Colman of India Ltd. v. M.P. Ramchandran & Anr*²⁶ the defendant had in a way directly compared the goods and went on to state impliedly that his goods are better than the direct competitor. The plaintiff and defendant were manufacturers of clothing detergent brands 'Robin Blue' and 'Ujala', respectively. It was contended by the plaintiff that the defendant, in its advertisement, had intentionally displayed a container that was similar to the one

in which the plaintiff's product was sold. The advertisement went on to state that the said product 'Blue' was uneconomical, and depicted that the same was a product of obsolete technology and hence ineffective. It was argued by the defendant that the bottle depicted in the advertisement did not bear any resemblance to 'Robin Blue', and that the object of the portrayal had been merely to assert the technological superiority of 'Ujala' over other competing products.²⁷ Having heard the parties and their say, the court laid down following principles

1. A tradesman is entitled to declare his goods to be best in the words, even though the declaration is untrue.
2. He can also say that his goods are better than his competitors', even though such statement is untrue.
3. For the purpose of saying that his goods are the best in the world or his goods are better than his competitors' he can even compare the advantages of his goods over the goods of others.
4. He, however, cannot while saying his goods are better than his competitors', say that his competitors' goods are bad. If he says so, he really slanders the goods of his competitors. In other words he defames his competitors and their goods, which is not permissible.
5. If there is no defamation to the goods or to the manufacturer of such goods no action lies, but if there is such defamation an action lies and if an action lies for recovery of damages for defamation, then the Court is also competent to grant an order of injunction restraining the repetition of such defamation.

X. CAPTURING BRAND IMAGE AND NEGATIVE IMPRESSION

In *Hindustan Lever v. Colgate Ltd*²⁸ two popular brands namely Colgate and Pepsodent were at the logging heads.²⁹ The allegation was that; by banking on the brand image of the competitor the

24 (69(1996) DLT 29).

25 See: Sudeep Chatterjee and Archana Sahadeva, Comparative advertising: An overview, World Intellectual Property Review, <<http://www.worldipreview.com/article/comparative-advertising-an-overview>>, last visited 18-02-2016.

26 1999 PTC (19) 741) ROBIN BLUE Vs UJALA BLUE.

27 See: Parth Gokhale and Shriyani Datta, Janaury-March, 2011, Comparative advertisements in India: Evolving a regulatory framework, 4 NUJS Law Review, 131.

28 (1998,1 SCC, 720).

29 See: Rashi Sharaf and Yamini Das, February, 2008, Comparative advertising laws, Legal Services.com, <Legalservices.com>, Last visited 20-11-2015.

advertisement not only compares the rival products but also tries to negatively influence the consumers. Pepsodent and Colgate are two reputed and established brands in the toothpaste segment in India having their own market share and effective consumer base.³⁰ Colgate has been old brand and pepsodent entered the market off late but sooner made its mark and impact in capturing good market. When there was products direct comparison in the advertisements by banking on the established market base and reputed brand image the matter reached the court of law contending unfair competition and misleading the consumers. It was held that direct comparison of the competitors product to create a negative impression in the minds of the consumer amounts to unfair competition and is against both competition law and trademark law. Similarly, attempts to bank on the brand image of the competitor through its negative projection are equally unfair practice duly prohibited under the above-mentioned laws.

XI. MODES OF DISPARAGEMENT AND IDENTIFICATION OF RIVAL PRODUCT IN THE ADVERTISEMENT

In *Godrej Soaps Ltd. v. Hygienic Research Institute*,³¹ different modes of disparagement were recognized on the basis of which comparative advertisement and act of disparagement³² could be proved. Alongside the question of identification of the rival products in the advertisement was addressed in the instant case. The advertisement shows the picture of 'Vasmol 33 Hair Dye' which is stated to contain *Ayurprash*, a natural way of blackening the hair and strengthening the roots of the hair Godrej Ltd and other bottles labeled to be ordinary which were alleged to be identifying the Godrej products. On Godrej questioning advertisement as disparaging, the Commission held that: disparagement could be by way of comparison through words, gesture, gimmicks pointing out indirectly to the inferiority of the informant's product. It stated that; under the

provisions of Section 36A(1)(x) of the MRTP Act, the product of another manufacturer has to be identified before it can be said that the same has been disparaged by way of making false and misleading statements. The advertisement in question no doubt refers to instant hair dye and Godrej hair dye as one amongst many instant dyes available in the market. The bottles used in the advertisement are not sufficient to identify the informant's product which is one amongst many in the market contained in similar cylindrical bottles like Vellatone, ROCCO, Royal, etc.

XII. EFFECT ON CONSUMER AND COMPETITORS

In *Laxmikant patel v. Chetanbhai shah*³³ effect of wrong use of trademarks, good will as well the means of identifying the business including advertisements was debated. It was viewed that; law does not permit anyone to carry on his business in such a way to mislead and confuse the consumers or to harm the competitor. It means that; nobody is allowed to wrongly spell out or compare the competitors in their business or advertisements to damage the business of the competitors through comparison. Therefore the acts such as comparative advertisements having effect on the consumer and as well on fair competition in the market shall be regulated by invoking the interplay of competition law, consumer law alongside trademark law.

XIII. MISLEADING AND PUFFERY IN ADVERTISEMENT

In *Pepsi Co. v. Coca Cola Ltd*³⁴ Issue of misleading advertisement was dealt with. Famous cool drink brands Pepsi and Coke were involved in this litigation.³⁵ The alleged advertisement of Coke was comparing and disparaging the brand image of Pepsi in countering the slogans of Pepsi in the advertisement. The famous slogan of Pepsi "Right choice baby" was countered with "wrong choice baby" and similarly another slogan of Pepsi "Dil mange more" was countered with "Kyo dil mange no more" by Coke in its advertisement. Pepsi approached court

30 See: Akhileswar Pathak, Janaury-March, 2005, Comparative advertising in India: Need to strengthen regulation, Volume: 30, Number: 1, Vikalpa .

31 Judgment of the MRTP Commission, 30/05/2001, 2001(43) CLA 300.

32 See: Sudeep Chatterjee and Archana Sahadeva, Comparative advertising: An overview, World Intellectual Property Review, <<http://www.worldipreview.com/article/comparative-advertising-an-overview>>, last visited 18-02-2016.

33 (24 PTC 1, SC 2002).

34 (2003, 27 PTC 305, Del).

35 See: Rashi Sharaf and Yamini Das, February, 2008, Comparative advertising laws, Legal Services.com, <Legalservices.com>, last visited 20-11-2015.

of law seeking injunction against the alleged comparative advertisement tending to dilute the image of their brand and disparage their goodwill and reputation amongst the consumers.³⁶ The EU Directive on Comparative advertising was referred to which states that misleading advertisement means any advertisement likely to deceive the consumers and economically affect the competitor. It was viewed that; advertisement shall not discredit or designate trademarks, goods and services of the competitor for deriving unfair advantage of the reputation and brand image involved. It was held that no advertisement could attempt to dilute the brand image of the competitor and deceive the consumer. While, in *Dabur India Ltd. v. Wipro Limited, Bangalore*³⁷ debating on the comparison of rival products in advertisements, it was held that; it is one thing to say that the defendant's product is better than that of the plaintiff and it is another thing to say that the plaintiff product is inferior to that of the defendant. While the later one could be disparaging the earlier one may not be if there is scientific proof. Further in *Glaxo Smith Kline Consumer Health Care Limited v. Heinz India Private Limited and Ors.*³⁸ Again the issue of misleading and misguiding the consumers was discussed. Herein, the parties were manufacturers of the reputed nutritional drinks 'Horlicks' and 'Complan' respectively. The first half of the advertisement had shown a young boy hanging on the central bar of a school bus, apparently in a desperate bid to gain some height. Thereafter, another boy approaches and advises him to start consuming the brand 'Complan', which he says is necessary for growing tall. Such incorrect portrayal was argued to be an attempt to misguide consumers with regard to the utility of the defendant's product, resulting in the plaintiff suffering economic losses. The defendant contended that the assertions made were understood by consumers to be an attempt at puffery, with there being no requirement of warranty with regard to the same. The Court held that an advertiser was at liberty to engage in puffery so long as the product of a competitor was not slandered in any manner. On the other hand, it also sought to regulate such representations of opinion by introducing a broad requirement to substantiate their tenability.

In *Colgate Palmolive Limited v. Anchor Health and Beauty Care Pvt Ltd.*³⁹ The plaintiff seeking an injunction restraining the defendant from broadcasting the contentious advertisement asserting that its product 'Anchor' was the 'only' one that contained three ingredients, namely calcium, fluoride and *triclosan* that could provide 'all round protection'. The plaintiff objected to such assertion as being false on the basis that even its products contained all of the three named ingredients. It argued that an assertion on part of the defendant that 'Anchor' was the 'first' product to provide 'all round protection' was an act of denigrating the competing product. The defendant replied to the same arguing that its use of the word 'only' was intended to mean that its product was the only one containing the three ingredients within the specific range of white toothpastes. Further, with regard to the usage of the word 'first', it argued that it on the adoption of the slogan 'all round protection', and not the utility of the brand. While the Court viewing that there is no active disparagement of the plaintiff's product. However, the use of the terms 'only' and 'first' in an untruthful and misleading manner was considered to be constitutive of an unfair trade practice.

XIV. DISPARAGE AND PUFFERY

In *Dabur India Ltd. v. M/S Colortek Meghalaya Pvt. Ltd.*⁴⁰ how far one can glorify their products in their advertisements was taken for debate. As per the facts of the case, the appellant was a manufacturer of mosquito repellent creams, namely 'Odomos' and 'Odomos Naturals'. The respondent also manufactured a mosquito repellent cream under the brand name 'Good Knight Naturals'. The respondent's advertisement of 'Good Knight Naturals', according to the appellant disparaged its product. The question that arose before the Court was whether the telecast disparaged the product of the appellant in an implied manner, and if so, whether the appellant was entitled to an injunction against the telecast. The Court observed that; while there would be some grey areas in the process of representation, any commendatory statements need not necessarily be taken as serious representations of fact, but only as glorifying the product, provided that the advertisement is not false, misleading, unfair or deceptive.

36 See: Parth Gokhale and Shriyani Datta, Janaury-March, 2011, Comparative advertisements in India: Evolving a regulatory framework, 131, 4 NUJS Law Review.

37 2006 (32) PTC 677.

38 2007 (2) CHN 44.

39 2009 (40) PTC 653.

40 2010 (42) PTC 88.

Also while glorifying the product, an advertiser may not denigrate or disparage⁴¹ a rival product. A cause of action would arise when the subject of the advertisement goes beyond mere commendatory statements to constitute untrue statements of fact about a rival's product. Further, in *Procter & Gamble Home Products v. Hindustan Unilever Limited*,⁴² the Calcutta High Court highlighted the difference between express denigration and puffery. The petitioners were manufacturers of a detergent powder brand 'Tide', while the respondents were the market rivals of 'Tide' and the manufacturers of the detergent powder 'Rin'. The respondents aired a commercial that compared both the products and allegedly portrayed the petitioner's product in a negative manner, claiming that 'Rin' was more effective than 'Tide' in providing 'whiteness' to clothes. The petitioner thus prayed for an injunction to restrain the respondent from telecasting the advertisement, contending that the same had not stopped at merely puffing the advertised product, but had disparaged the competing product. The respondents herein submitted that the assertions in the advertisement were a comparison of the quality of the two products, in particular the 'whiteness' quotient. They argued that the fact that the whiteness provided by *Rin* was better could be inferred from laboratory tests conducted by both the respondent and independent agencies, thus resulting in an absolute defense of truth and the commercial fell within the ambit of permitted comparative advertising. The Court, however, differed from the respondent's view and held that there was an express denigration of the petitioner's product.⁴³ According to the Court, it was discernable from the format of the advertisement and the manner of its depiction that it had the overall effect of portraying the competing product in a poor light rather than promoting the seller's own product.

XV. CONCLUSION: APPLICATION OF LAW

After the above discussion for ensuring effective regulation of comparative advertisements in India there is a need to look into various legislations and legal measures. The possible way out for regulating comparative advertisements could be inferred as follows:

- Effective application of trademark law on advertisements and use of TM as provided under section 29 and 30 of the Act.
- Protection of consumer interest as propelled under the consumer protection Law against unfair trade practices as per the language of Section: 2(1) r.
- Spreading consumer awareness on their rights and also on the comparative advertisements
- Regulation of anti-trade and anti-competitive practices as per the competition law under *section: 66*.
- Curbing any direct comparison and disparaging⁴⁴ advertisements in the market.
- Giving statutory or legal effect to the standards laid down by the advertising council of India in particular the Chapter: IV of the standard code.
- Following the rule of law laid down by the law courts in various judicial decisions as discussed.
- Ensuring effective interplay and interface amongst the TM law, competition law and consumer law as invoked and interpreted in the court decisions.

41 See: Sudeep Chatterjee and Archana Sahadeva, Comparative advertising: An overview, World Intellectual Property Review, <<http://www.worldipreview.com/article/comparative-advertising-an-overview>>, last visited 18-02-2016.

42 High Court of Calcutta, G.A. No. 614 of 2010, C.S. No. 43 of 2010.

43 Parth Gokhale and Shriyani Datta, Janaury-March, 2011 Comparative advertisements in India: Evolving a regulatory framework, 131, 4 NUJS Law Review .

44 See: Sudeep Chatterjee and Archana Sahadeva, Comparative advertising: An overview, World Intellectual Property Review, <<http://www.worldipreview.com/article/comparative-advertising-an-overview>>, last visited 18-02-2016.