

# Comparative Advertisement and Trademark Infringement: A Comparative Analysis

*Indralina Sen*<sup>1</sup>

## I. ABSTRACT

*Comparative Advertisement is all about representation of a product in a way that enables consumers to reach more rational and informed purchasing decisions, increasing consumer information and comprehensive of the brand in progress. This has evaded the concept of traditional advertisement but brought with it new issues relating to disparagement, unfair competition and trademark infringement. Comparative Advertisement allows one to show ones goods best in the world by comparing it with others but it cannot be allowed to say its competitor's goods to be bad. "Trade mark" means a mark capable of being represented graphically and which is capable distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours. Section 29 of the Trade Mark Act 1999 speaks about the Infringement of registered Trade Mark. This paper focuses that not only in India but in other countries like US, Uk and European Union trade mark infringement during Comparative Advertisement is not permissible. The paper seeks to analyse the intricacies of law involved in the concept of comparative advertising in relation with trademark infringement.*

**Keywords:-** Advertising, Comparative Advertisement, disparagement, infringement, Trade mark, unfair competition.

## II. INTRODUCTION

Comparative advertisement is all about representation of a product claiming what other product or service is not. Today the marketing strategy of every brand is to claim their superiority over the other brand. Generally new or unknown brand takes benefit from comparative advertisement. Comparative Advertisement in a way enables consumers to reach more rational and informed purchasing decisions, increasing consumer information and comprehensive of the brand in progress. India although has no particular law for comparative advertisement like US and UK, yet Delhi High Court has ruled certain judgments in this regard. Moreover Monopolies of Restrictive Trade Practices Act, 1984 and The Trademark Act, 1999 talks about Comparative Advertisement. Advertisement is considered as commercial speech. Therefore it is a part of freedom of speech also as

---

<sup>1</sup> Assistant Professor of Law, UEMK, West Bengal, India.

guaranteed under article 19(1) (a) of Indian Constitution. Comparative advertisements can be classified into two types- advertisement that compare the competing products directly and the one in which comparison is done indirectly. While in some countries, like UK, both form of comparative advertisement are allowed, there are other countries where comparative advertisement is not allowed at all. However, comparative advertisement is legal, as while comparing the goods, a trader does not project or say that the goods of his competitor are inferior or undesirable. All he can do is puff up his products but he cannot belittle the products of his competitor. In India puffery is allowed as long as it is subjective.

Here in this paper we will find that comparative advertisement was promoted both in Federal Trade Commission in US and EU because it enables consumers to reach more informed and rational purchasing decisions, increasing consumer information and comprehensive of the brand in the process. An identical or extremely similar mark must be kept at a greater distance in terms of the goods or services covered. It is pertinent to mention here that Section 29 of the TM Act 1999 speaks about the Infringement of registered TM where in, section 29(8) of the said Act specifically indicates that a registered TM is infringed by any advertising of that TM if the advertising takes unfair benefit and is against the honest practice, if this advertising will be hazardous to the unique character of the TM or is against the reputation of the TM.

Hence, in this paper it will be found that not only in India but in other countries like US, UK and European Union trademark protection is given and thereafter this paper will discuss about the remedies that are available against infringement under different statutes in different countries. Thus it will be observed that comparative advertisement is permissible in all countries but no one can mislead or falsify that detracts the interest of the traders and the public at large and leads to trade mark infringement.

### **III. TRADEMARK INFRINGEMENT IN COMPARATIVE ADVERTISEMENT:**

‘Comparative Advertisement (hereinafter referred to as CA) is the term used to describe advertisement where the goods or service of one trader are compared with the goods and service of another trader.<sup>2</sup> It means using of another’s trademark is permissible, however while doing so the advertiser cannot disparage the goods or services of another. Any such act disparaging the goods or services of another shall not only be an act constituting infringement, but shall also be an act constituting product disparagement.

Now a trade mark is literally a ‘mark’ that one business uses to distinguish its product or services from another. It is one of the areas of intellectual property and its main function is to protect the mark of the product, that is to say, goods and services.

---

<sup>2</sup> Uphar Shukla, *Comparative Advertising and Product Disparagement vis – a - vis Trademark Law*, vol.11 JOURNAL OF IPR 409 – 414 ( November, 2006)

- In India S. 2 (1) (zb) of **The Trade Mark Act 1999** defines a “Trade mark” as a mark capable of being represented graphically and which is capable distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.<sup>3</sup>
- In **Trade Marks Act, 1994 of U.K.** a “trade mark” means any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings. A trade mark may, in particular, consist of words (including personal names), designs, letters, numerals or the shape of goods or their packaging. References in this Act to a trade mark include, unless the context otherwise requires, references to a collective mark or certification mark.<sup>4</sup>

In the Indian context there is neither tort of unfair competition nor a tort of trademark infringement as both are codified under Monopolies and Restrictive Trade Practices Act, 1969 now repealed by Competition Act 2002 and Trademark Act 1999.

Comparative advertising could constitute trademark infringement even if the trademark is well known. The entire concept of ‘disparagement of goods of another person’ flows from the MRTP Act which leads to unfair trade practice. And that is what is condemned in the section 29(8)(a) of Trademark Act also.

In the case of comparative advertising and product disparagement, trademark issues arise only when a competitor’s trademark is used, e.g., *Pepsi Co. Inc. and Ors. v. Hindustan Coca Cola Ltd. and Anr: (2003)*<sup>5</sup>

In this case, Pepsi filed a suit against Coca-Cola for wrongful use of their TM in a commercial where in a lead actor asks a kid to his favourite drink for which he says that he likes Pepsi which was obvious from his lip movement as it was muted. Then the lead actor asks the kid to taste the two samples of drinks after hiding their identity and questions the kid as to "Bacchon Ko Konsi pasand aayegi"?. Thereafter, the lead actor opens the lid of both the bottles, it is revealed that the bottle which the kid likes was “Thumps-Up” while the other had PAPPY written on it which deceptively resembles PEPSI.

In some other advertisements the commercials read the slogan as "Wrong choice baby", and that the "Thums Up" is a right choice, and "Kyo Dil Maange No More" which amounts to damaging the repute of Pepsi.

**Held:** The court held Coca-Cola on the grounds of disparagement and depreciating the goodwill of the plaintiffs’ products under TM and Copyright Act as the registered TM was being infringed by the use of a Globe Device or the word PAPPY which is deceptively resembling to the TM PEPSI.

When the proprietor of a registered trade mark wishes to prevent its use in comparative advertising, he may rely

<sup>3</sup> DR. B.L. WADEHRA, LAW RELATING TO INTELLECTUAL PROPERTY, 133 (Universal Law Publishing Co. Pvt. Ltd. 4<sup>TH</sup>ed. 2007).

<sup>4</sup><http://www.ipo.gov.uk/tmact94.pdf>> visited on 17. 5. 2013

<sup>5</sup> (27) PTC 305 Del

on the Trade Marks Act, in particular the infringement provisions.

Under the U.S law the stronger the mark the broader is the protection given to it.<sup>6</sup>

### **POSITION IN INDIA**

In India the first Trademark legislation was Indian Merchandise Act, 1889 where the disputes or problems relating to the infringement of Trademark or passing off were decided under of s. 54 of the Specific Relief Act 1887 and registration problem was tackled under the Registration Act 1908. This act was repealed in the year 1940 and was followed by the enactment of Trademark Act 1940. In the year 1958, The Trade and Merchandise Marks Act was adopted which repealed the Indian Merchandise Act, 1889 and Trademark Act 1940 and was provided with s.129 for the registration of Trademarks.

Further, in the year 1999, Trademark Act was adopted which came into force on 15th September, 2003 which repealed The Trade and Merchandise Marks Act, 1958.

The trademark perspective of comparative advertising was not known until the Trademark Act of 1999. Section 29 of the TM Act 1999 speaks about the Infringement of registered TM where in, section 29(8) of the said Act specifically indicates that a registered TM is infringed by any advertising of that TM if the advertising takes unfair benefit and is against the honest practice, if this advertising will be hazardous to the unique character of the TM or is against the reputation of the TM.

In *Reckitt Benckiser v. Hindustan Lever*<sup>7</sup>, the court noted that Sections 29(8) and 30(1) of the Trademarks Act 1999 address the issue of comparative advertising and product disparagement with respect to trademarks.

### **POSITION IN UK, US AND EU**

#### **IN US**

In the United States, misleading advertising has been condemned by the Federal Trade Commission (FTC) since 1915. Pursuant to section 32 of the Lanham Act, a party will be liable for infringement of a federally registered trademark if that party uses “in commerce any reproduction, counterfeit, copy, or colourable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.”<sup>8</sup> To establish a trademark infringement claim under the Lanham Act, the plaintiff must demonstrate that the defendant is using a mark confusingly similar to the plaintiff’s own mark. In *Playboy Enterprises, Inc.*

---

<sup>6</sup> Supra note 31 at p. 529.

<sup>7</sup> 2008 (38) PTC139

<sup>8</sup> 15 U.S.C. § 1114(1)(a) (2000).

*v. Frena*,<sup>9</sup> for instance, Playboy sued Frena, an operator of an electronic bulletin board service, where subscribers often uploaded and downloaded copies of Playboy photographs for exchange. Playboy's registered PLAYBOY and PLAYMATE trademarks appeared on many of the images. Playboy brought an action against Frena for trademark infringement. Although Frena claimed that he could not regulate what his subscribers placed on the bulletin board, the court held that this amounted to infringement: "It is likely that customers of Defendant Frena would believe that [Playboy] was the source of Defendant Frena's images and that [Playboy] either sponsored, endorsed or approved [his] use of [the] images."

#### **IN EU:**

In 1975, the European Commission (EC) first proposed a directive dealing with misleading and unfair advertising. This proposal was developed by examining the individual laws of European countries, which were founded in the laws of unfair competition, but also by examining U.S. law. After much controversy, the EC adopted a directive on misleading advertising.<sup>10</sup> In the European Union, a Community trade mark registration is considered to be a single registration that confers protection in the entire territory of the EU. Interestingly, Europe has a more developed sense of unfair advertising than has the United States, particularly in regard to television advertising.

#### **IN UK:**

S.10 (3) of the Trade Marks Act 1994 of UK states that in order to constitute infringement under this section it is not necessary to prove likelihood of confusion even where there is no similarity between the goods in question.

In *BMW v. Deenik*<sup>11</sup> a garage owner advertised the fact that he has expertise in repairing and servicing BMW cars by using the phrases 'BMW Specialist', specialised in BMW and Repairs and Maintenance of BMWs'. BMW objected to the use of its registered trademark in this way and issued proceedings, which was ultimately referred to the ECK, basing its claim on Article 5 of the Directive. The Court held that the user of BMW's registered trade mark in these circumstances was justified on the basis that otherwise the garage owner would not be able to promote its service and further, that it fell within the scope of Article. 7 of the Directive in that the defendant was referring to genuine BMW cars which had been put on the market with BMWs consent. Article 7<sup>12</sup> states that the proprietor of the trademark cannot prohibit the use of his goods in the market in the community under that trademark with his consent. Subject to the condition that the goods are changed or impaired after they have been put on the market or any other legitimate cause.

<sup>9</sup> 839 F. Supp. 1552 (M.D. Fla. 1993).

<sup>10</sup> Supra Note 15

<sup>11</sup> Bayerische Motorenwerke, AG v. Deenik (1999) ETMR 399

<sup>12</sup> Article 7 (1) of the First Council Directive (89/104/EEC)

Thus it can be found in comparison between the three countries that trademark infringement during comparative advertisement is not allowed but one may compare his products with another in a healthy manner which will be discussed more in details later.

#### **IV. STATUTORY FRAMEWORK OF COMPARATIVE ADVERTISEMENT: COMPARATIVE ANALYSIS**

Comparative Advertisement is a means for competitors to inform the public that their product is the best product compared to others, available in the market without taking any unfair means. In comparative advertising the comparison between a new product or an existing rival product (competitor), could be through a statement, comparative price chart or in the form of mockery etc.<sup>13</sup> Some look at competitive advertising as an effective deterrent against increasing product prices as well as valuable tool to promote competition, product improvement and modernization.<sup>14</sup> It can also lead to trademark infringement.

##### **INDIAN PERSPECTIVE:**

In India advertising 'is regulated by various statutes and code like the Constitution of India, Trademarks Act 1999 and Consumer Protection Act<sup>15</sup> and codes of Advertising Standard Council of India (ASCI)<sup>16</sup> etc. The Trade Marks Act, 1999 came into place after The Trade and Merchandise Act Marks Act, 1958 was repealed. "India enacted its new Trademarks Act 1999 and the Trademarks Rules 2002, with effect from 15th September 2003, to ensure adequate protection to domestic and international brand owners, in compliance with the TRIPS Agreement."<sup>17</sup> Section 29(5) of the Act provides that the use of a registered mark in an advertisement is infringing if it takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; if it is detrimental to the distinctive character of the trade mark; and if it affects the reputation of the trade mark. On the other hand, Section 30(1) provides that comparative advertisements which are fair and accurate do not harm the consumers and accordingly should not be prohibited by the use of registered trademarks by third parties.

Apart from this the guidelines the "Advertising Standards Council of India (ASCI)" specifies that comparative advertisement is permissible if the aspects of the products compared are clear, factual and substantial, such

---

<sup>13</sup> C.B. RAJU, INTELLECTUAL PROPERTY RIGHTS, 36 (2007); see also Padmavati S., *Comparative Advertising: A Concern For Trademark*.

<sup>14</sup> Supra note 1 at p. 391

<sup>15</sup> As per Section 2( r ) (x), unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, gives false or misleading facts disparaging the goods, services or trade of another person.

<sup>16</sup> ASCI has been established in 1985 with an objective to protect the interest of the consumers through responsible advertising and is a self regulatory voluntary organization of the advertising industry. For more information the ASCI code may be accessed at <http://www.ascionline.org/>

<sup>17</sup> Shruti S Mathew, *Comparative Advertisement And Trademark Infringement- Study Of Indian And Uk Laws*, 6

comparison does not confer artificial advantages on advertiser, there is no unfair denigration of the competing product and is unlikely to mislead the consumer.

Colgate Palmolive v. Hill<sup>18</sup>

The appellant started their advertisement campaign for colgate dental cream claiming that it had an action of germ fighter and the ability to fight tooth decay and to stop bad breadth. It claimed that it provides a ring or circle of safety/ or protection which they termed as 'suraksha chakra'. The respondents alleged that the above claims were false and misleading, thus it amounted to unfair trade practice.

The Court held that when unfair trade practice has to be determined, it has to be examined whether it contains a false statement and is misleading and further as to what is the representation made by the manufacturer on the common man. For holding a trade practice to be unfair trade practice it must be found that it causes loss or injury to the consumer. The court further held that slight exaggeration doesn't amount to unfair trade practices. But it was clear after the findings that not a single consumer was reported to have misled due to the advert of Suraksha Chakra and hence no injunction was granted to Colgate as it supported the statement of Suraksha Chakra as its means to provide suraksha to the tooth decay, bad breath and germ killing by using a chakra.<sup>19</sup>

**CONSTITUTIONAL PERSPECTIVE:**

Under Article 19 (a) of the Constitution of India right to freedom of speech and expression is protected, and many advertisements can argue the same. It is very important for us to analyze article 19 (1) (a) of the Constitution in relation to comparative advertising. As we know that freedom under this article is available for public speaking, radio, television, and press. However, the freedom of speech and expression has limitations and the same is restricted by imposing reasonable restrictions by the state under article 19 (2) of the Constitution of India. In the case of Tata Press Ltd. vs Mahanagar Telephone Nigam Ltd.<sup>20</sup> the Supreme Court held that "commercial speech cannot be denied the protection of Article 19(1) (a) of the Constitution merely because the same is issued by businessmen". Court took a very wide interpretation of the Article 19(1) (a) of the Constitution Supreme Court held that advertising as a 'commercial speech' has two facets. Advertising disseminates information regarding the product advertised. Public at large is benefited by the information made available through the advertisement. In a democratic economy, free flow of commercial information is indispensable. The economic system in a democracy would be handicapped without there being freedom of 'commercial speech.' Mahanagar Telephone Nigam Limited cannot come in the way of Tata Press Yellow Pages in "public interest" as no such ground is mentioned in Article 19(2). Commercial speech now enjoys as

<sup>18</sup> AIR 1999 SC 3105

<sup>19</sup> Sumit Mitra, "Holding the Ring", *India Today*, October 4, 1999.<http://www.india-today.com/itoday/19991004/biz.html>

<sup>20</sup> 1995 AIR (SC) 2438.

much protection as any other speech. But if the comparative advertising is done in such a manner so as to infringe the other person's rights or goodwill or to hamper trade, the advertisement will not get protection under the Constitution of India.

### UK, US AND EU PERSPECTIVE:

Prior to 1994, comparative advertisement was relatively uncommon in the UK. This was partly due to the fact that such advertisements brought with it legal difficulties since a reference to competitor's trademark would invite a risk of an action for trademark infringement. But with the implementation of the Trade Marks Act 1994 (TMA) in the UK which permits the use of a third party's registered trademark subject to certain condition. S. 10(6) of the Act allowed comparative advertising with two purposes:

- a. It would permit use of marks upon or in relation to genuine goods of the trademark proprietor or any of his licensees
- b. It would allow the use of mark in comparative advertising, but in both instances the use has to be with honest practices in industrial or commercial matters.<sup>21</sup>



*Macdonalds Hamburgers Ltd v Burger King*<sup>22</sup>(1987)

By saying 'this is not just a Big Mac', Burger King attempted but failed to differentiate the competing products. The failure resulted in a finding that a misrepresentation had been made as consumers would think that the two burger products were related rather than competing.

However, the meaning of the term 'comparative advertising' may appear self – evident , but according to a survey of advertisements reveals that there are three categories into which all advertisements falls, these are:

- Non Comparative Advertisements( NCA)
- Indirect Comparative Advertisement( ICA)
- Direct Comparative Advertisement (DCA).<sup>23</sup>

<sup>21</sup> AMANDA MICHAEL WITH ANDREW NORRIS, A PRACTICAL APPROACH TO TRADEMARK LAW, 155 – 156 ( 4<sup>th</sup> ed. 2010)

<sup>22</sup>[1987] FSR 112

<sup>23</sup> RODNEY D RYDER, TRADEMARK ADVERTISING AND BRAND PROTECTION, 218 ( Macmillan India Ltd. , 2006)



Under EU Art. 2(c) of the Advertising Directive of EEC defines comparative advertisement as ‘comparative advertising’ means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor;

Federal Trade Commission in US and EU both promoted comparative advertisement because it enables consumers to reach more informed and rational purchasing decisions, increasing consumer information and comprehensive of the brand in the process. There appears to be an underlying assumption that comparative advertisement is in the interest of the consumer despite the absence of any real evidence.<sup>24</sup>

### **DISPARAGEMENT IN COMPARATIVE ADVERTISEMENT**

Disparagement means matter which is intended by its publisher to be understood or which is reasonably understood to cast doubt upon the existence or extent of another’s property, whether tangible or intangible or upon its quality. There is no specific definition of disparagement of goods available in any statute.<sup>25</sup> However, the Concise Oxford Dictionary defines disparage as under, to bring dis-crediting or reproach upon; dishonor;<sup>26</sup> Disparagement shows whether the goods of a trader or manufacturer are disparaged would depend upon the facts and circumstances of each case.<sup>27</sup>

Section 36A of the Monopolies Restrictive Trade Practices Act; showcase the issues on unfair trade practices which ultimately lead to the cause of disparagement of goods and services of another person.

A trader or a 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)<sup>28</sup> wherein,



The Court held that the defendant was disparaging the goods of the plaintiff and was told to restrain from advertising the competitors product in a disparaging manner.

<sup>24</sup> Comparative Advertisement And Infringement Of Trademark

<sup>25</sup> Shruti S Mathew, *Comparative Advertisement And Trademark Infringement- Study Of Indian And Uk Laws* (Academia.edu, 7-8 )visited at [https://www.academia.edu/5728858/Project-\\_CA\\_AND\\_TM\\_Infringement](https://www.academia.edu/5728858/Project-_CA_AND_TM_Infringement) on 8.03.2015

<sup>26</sup> <http://www.legalserviceindia.com/article/1182-Comparative-Advertising-laws.html> accessed on 8.03.2015

<sup>27</sup> Supra note 18 at p.345

<sup>28</sup> 63 (1996) DLT 29

Thus from the above analysis it can be observed that any such disparagement of CA is reviewed and evaluated based on three parameters viz. whether it contains a false statement or is misleading and finally the effect of such a depiction on the end users or common man.<sup>29</sup>

## V. REMEDIES AVAILABLE AGAINST INFRINGEMENT OF ADVERTISEMENT

‘Ubi jus ibi remedium’, the term means where there is a right, there must be a remedy. Any court not inferior to a District court having jurisdiction can grant relief in both the cases of infringement and passing off suit. Various types of reliefs granted to which a plaintiff is entitled are-

- i. An injunction restraining further use of the infringing mark.
- ii. Damages or an account of profits.
- iii. An order for delivery-up of infringing labels and marks for destruction or erasure.

In the case of M/s South India Beverages Pvt. Ltd. v. General Mills Marketing Inc. & Anr<sup>30</sup>.



In a recent trademark appeal at the Delhi High Court over two allegedly similar marks ‘HAAGEN DAZS’ and D’DAAZS. Both the appellants and the respondents were engaged in the business of the sale of ice-creams and related dairy products, although admittedly in different price brackets. The Court upheld the order of the Single Judge granting an interim injunction against use of the latter mark by the appellant-defendant.

### Permanent injunction

Color combinations as trademarks

Colgate Palmolive Company v. Anchor Health and Beauty Care Pvt Ltd<sup>31</sup>



<sup>29</sup> Supra note 19 at p.7

<sup>30</sup> 13 October, 2014

<sup>31</sup> 2003 (27) PTC 478 (Del)

The court stopped the defendant from using red and white in its packaging and trading as the plaintiff had proprietary rights over the combination when used for toothpastes. As a consequence the application is allowed and defendants are, by way of ad interim injunction, restrained from using the colour combination of red and white in that order on the container/packaging of its goods viz. the "Tooth Powder".

Although, granting injunctions was the usual remedy, Indian courts, especially the High Courts have recently started awarding both compensatory and punitive damages for trademark infringement. The trend of awarding punitive damages in the realm of trademarks started with *Time Incorporated v Lokesh Srivastava*<sup>32</sup>.

### **OTHER REMEDIES**

The other laws under which the aggrieved parties can claim for infringement of trademark in comparative advertisement are as follows:

1. The Consumer Protection Act of 1986
2. The Prevention of Food Adulteration Act of 1954
3. The Emblems and Names (Prevention of Improper Use) Act of 1950
4. The Drugs and Magical Remedies (Objectionable Advertisement) Act of 1954
5. The Indecent representation of Women (Prohibition) Act of 1986
6. The Drugs and Cosmetics Act of 1940
7. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

Other Acts includes The Young Persons (Harmful Publications) Act of 1956, Motor Vehicles Act of 1988, The Prize Competition Act, 1955, The Transplantation of Human Organs Act, 1994etc. under all these Acts also a person can claim for compensation for infringement of their rights.

However in other countries like US, UK and EU also remedy for infringement of trademark is provided. Like in US infringement of trademark is protected under the Lanham Act where in the plaintiff must show (1) that it has a valid mark, and (2) the defendant's use of the same or similar mark is likely to cause confusion in the minds of consumers in order to get remedy for infringement of trademark.

In EU countries, damages are assessed taking into account the quantity of goods that could have been sold by the claimant, if the defendant had not infringed the claimant's right. The tendency of the courts in EU is to place trademark owners in the same position, as they would have been had the defendant not infringed the claimant's rights. The courts also take into account the duration of infringement while determining damages. Where the claimant is unable to prove actual losses, courts have awarded lump sum amount on the basis of

---

<sup>32</sup> 2005 (30) PTC 3 (Del).

royalties, which the claimant would have earned if the defendant had obtained authorization from the claimant. Compensation is also awarded for depreciation of goodwill and reputation of trademark. Punitive damages in the form of double royalties, higher damages for intentional infringement, coercive payments are not awarded in any EU country, except Bulgaria.

Thus from the above it is clear that not only Trademark Act 1999 provides for remedy in case of trademark infringement but other laws and other countries also have provisions for protecting the owners from trademark infringement.

## VI. CONCLUSION

From the above research, it can be concluded that no doubt comparative advertising is beneficial as it increases, competition among traders, consumer awareness and brings product identity in the market and therefore, it should be allowed. But, at the same time there must be checks wherein it has to be looked into the matter that the traders in the process of comparative advertising is not misleading or taking any unfair trade practises or disparaging the other rival's products and infringing their trademark thereby misleading the public while advertising their product. In India advertising is regulated by various statutes and code like the Constitution of India, Trademarks Act 1999 and Consumer Protection Act<sup>33</sup> and codes of Advertising Standard Council of India (ASCI)<sup>34</sup>. In this paper we have found that India enacted its new Trademarks Act 1999 and the Trademarks Rules 2002, with effect from 15th September 2003, to ensure adequate protection to domestic and international brand owners, in compliance with the TRIPS Agreement. In US section 32 of the Lanham Act and EU Art. 2(c) of the Advertising Directive of EEC defines comparative advertisement, and In US, The Lanham Act' is the federal statute governing actions for trademark registration, infringement, and unfair competition. Trade Marks Act 1994 (TMA), of UK also permits comparative advertising but subject to certain conditions. However, it has been found that from the point of view of intellectual property rights one needs protection over his trademark, a third person cannot be permitted to take the trademark owner for a ride at the cost of his reputation. Now whether comparative advertisement amounts to trademark infringement depends on the language and the communication used in the advertisement. This is to be judged by looking at the advertisement as a whole. Thus the statutes and the Courts do provide protection of trademark even during comparative advertisement as seen under s. 29(8) of the Trademark Act and also under the UK Trademark Act, 1994.

Thus it can be concluded by saying that comparative advertisement was prevalent in UK and USA and now it has widespread in India also but due to such increase trademark infringement in comparative advertisement

---

<sup>33</sup> Section 2( r ) (x), of the Consumer Protection Act

<sup>34</sup> Supra note 15

using unfair, misleading trade practices has become quite common. The courts and the legislation here plays an important role in stopping disparagement using unfair means and provide proper remedy to it.