Central University of Karnataka
Journal of Legal Studies (CUKJLS)
Volume I (Summer Issue - 2)
January to June 2026

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

Judicial Considerations Specific to the Food and Beverage Sector in Indian Cases of Trademark Disparagement through Comparative Advertising

Parvathi Badrinath
Rajiv Gandhi School of Intellectual Property Law, IIT Kharagpur
Corresponding Author Email ID: parvathi.badrinath@gmail.com
DOI Link: https://doi.org/10.5281/zenodo.22861684

Abstract

This paper examines trademark disparagement through comparative advertising in the food and beverage (F&B) sector. Comparative advertising leads to legal disputes when it disparages trademarks. A gap in the current literature on this subject is the lack of detailed, sector-specific guidance for India's F&B sector. This gap is important because the sector relies heavily on brand perception. However, existing research has not sufficiently addressed how the judiciary has treated the unique challenges of comparative advertising in this field. The objective of this paper is to identify the factors that Indian courts consider in trademark disparagement cases through comparative advertising in the F&B sector. It also offers some suggestions for legislative reform and recommendations for F&B businesses on comparative advertising practices. The paper adopts a doctrinal methodology, analysing relevant legal principles, statutory provisions, judicial tests, and case laws such as PepsiCo v. Hindustan Coca-Cola (2003) and HUL v. Gujarat Co-operative Milk Marketing Federation (2017). The findings of this paper are that courts consider the nutritional and health impacts, product presentation, expert backing, marketing, and experiential attributes when adjudicating trademark disparagement cases arising from comparative advertising in the F&B sector.

Keywords:

Trademark Law; Disparagement; Comparative Advertising; Food and Beverage Sector

Paper Code- CUKJLS-2026-011
Submitted- June 30, 2026; Accepted- August 26, 2026; Published- September 20, 2026

Introduction

A "trademark" is any word, name, symbol, configuration, device, shape of goods, packaging, combination of colours, or mark that can be graphically

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

represented and distinguishes one's goods from those of others (Trademarks Act, 1999). Some of the most recognisable trademarks include the iconic Amul girl mascot, the Tata stylised "T" emblem, the Parle-G biscuit pack, the Kingfisher bird, and the Saffola logo. Apart from indicating the source of origin of goods, they embody the trust, quality, goodwill, and reputation that businesses build with their consumers. This is especially evident in the food and beverage (F&B) sector, where brand identity and consumer perception are paramount.

Some popular F&B brands operating in India include Amul, Britannia Industries, Dabur India, ITC Foods, PepsiCo, Haldiram's, Varun Beverages, Marico, HUL and Parle Products, among many more. To keep their products competitive, F&B companies like these promote the strength of their own brands and, at times, compare themselves to other competitors through comparative advertising. "Comparative advertising" is not explicitly defined by Indian law. It is generally understood as "the practice of advertising goods by comparing them with, and suggesting they are better than, another company's products" (Cambridge Dictionary, n.d.).

Comparative advertising can guide consumer choice and promote healthy competition (Warrier & Saxena, 2024) and market efficiency (Snow, 2016). However, it also risks unfairly undermining rival trademarks through 'disparagement', commonly understood as factually incorrect, dishonest, or misleading statements that cast doubt on a competitor's goods or services, with the aim of calling their quality into question and influencing public opinion. In trademark law, such statements amount to the offence of "trademark disparagement" and potentially give rise to legal action such as injunctions to protect the reputation of the disparaged brand. However, "puffery" by making exaggerated claims, for example, "the best chocolate", "the #1 cooking oil", does not denigrate competitors and is legally permitted (Pespi v. Coca-Cola, 2003).

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

In our modern, fast-paced consumer economy, the boundaries between fair comparison and disparagement have grown increasingly blurred. For the Indian F&B industry, whose reputation directly affects public health and trust, and which serves a populous and diverse Indian consumer base, addressing this tension is especially critical. It becomes important to understand how the court handles these issues. This paper analyses cases of trademark disparagement through comparative advertising, points out F&B sector-specific factors cited by the Indian judiciary, and offers insights for businesses to navigate this area responsibly.

Literature Review

The literature review began with the aim of developing a conceptual understanding of trademark disparagement and comparative advertising. Ahuja (2017) was relied upon for insights into the textbook concept of trademark disparagement in general. Dictionary and scholarly definitions were looked into to define 'comparative advertising'. Next, the boundaries of trademark disparagement were defined to distinguish it from permissible puffery. Precedents such as Tata Press v. MTNL (1995) have established that commercial speech has constitutional protection, subject to reasonable restrictions mentioned in Article 19(2) of the Constitution. However, it loses this protection once advertising becomes false, misleading, unfair, or deceptive. Competitive pressures (Bafna, 2018) drive advertisers to denigrate rivals, which the judiciary frowns upon. In such cases, Sen (2019) adds that judicial review focuses on honesty and the prevention of falsehoods.

After the conceptual framework on trademark disparagement and comparative advertising was examined, the legal framework governing trademark disparagement was examined. These include: the (1) Trademarks Act 1999, (2) the Consumer Protection Act 2019, and (3) the Advertising Standards Council of India (ASCI) Code. Having identified the legal framework, the judicial tests to ascertain disparagement were sought next. Judicial tests for trademark disparagement range from earlier landmark cases like PepsiCo v.

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

Hindustan Coca Cola (2003), which created the iconic "intent, manner, and storyline of the advertisement" test, to subsequent cases such as HUL v. Reckitt Benckiser (2013), that have developed more elaborate tests for trademark disparagement. Looking into these tests gave an idea of what thresholds and standards the court considers for the issue of disparagement.

Then, the study of foreign jurisdictions, including and limited to the United Kingdom, the United States, and the European Union, provided insights into how laws in these countries handle comparative advertising, particularly in the F&B sector, as opposed to, say, the pharmaceutical sector, automobile sector, electronics, or luxury goods, or in a general sense. An attempt was made to identify rules and ideas that India could adopt.

Lastly, trademark disparagement cases in the F&B sector were searched for, forming the core analysis of this paper. A comprehensive search of legal databases, including Manupatra and SCC Online, resulted in 10 F&B-specific cases on disparagement, given the niche focus of this paper's topic. For scholarly literature, platforms such as Google Scholar and HeinOnline displayed relevant articles. 22 initially identified sources were narrowed down to 14 based on quality and relevance. The scholarly material, mostly on trademark disparagement in relation to comparative advertising, enhanced understanding of this nexus. Overall, the considerations specific to the F&B sector were derived from constitutional, statutory, judicial, and scholarly sources. All the relevant literature surveyed revealed that courts do cite certain considerations specific to the F&B sector, which are listed as findings in this paper, along with the respective cases from which they are drawn. Ultimately, 14 cases and 13 articles were shortlisted as relevant and useful for further review in this paper.

Research Gap

Existing literature on trademark disparagement and comparative advertising largely focuses on general legal principles, generalised judicial tests, and high-

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

profile trademark disparagement disputes. Overarching sectors, such as fast-moving consumer goods (FMCG), are discussed due to frequent litigation in this sector. While these cover F&B cases, they are not limited to this sector and apply to all FMCG goods, such as personal care and hygiene items, toiletries, household items, and over-the-counter medicines. As for sector-specific research, numerous case studies exist specifically for pharmaceutical goods, and the luxury goods sector is almost always discussed in literature on reputation, dilution, and prestige surrounding well-known trademarks. While generalised and broad coverage of trademark disparagement exists, sector-specific research into the unique challenges faced by the F&B industry, where public health and consumer trust matter most, is deficient. This study attempts to fill this gap by critically analysing Indian F&B case law on trademark disparagement through comparative advertising, highlighting sector-specific judicial treatment in such cases.

Research Objectives

1) To analyse how Indian law has defined and how courts have applied the boundaries between permissible comparative advertising and actionable trademark disparagement.
2) To identify sector-specific factors that influence the Indian judiciary's assessment of disparagement claims in F&B comparative advertising disputes and derive actionable insights for legal compliance by businesses.

Research Questions

I) Corresponding to Objective 1:

1) What are the laws that govern trademark disparagement through comparative advertising in India?

Website: https://cukjls.cuklaw.in/
Email: editor.cukjls@cuk.ac.in

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

2) What legal tests and principles have been laid down by the Indian courts in determining whether a comparative advertisement amounts to trademark disparagement?

II) Corresponding to Objective 2:

1) In instances of trademark disparagement through comparative advertising in the F&B sector, what sector-specific considerations have courts cited in their decisions?
2) What are some valuable insights from foreign jurisdictions, including, and limited to, the UK, US, and the EU, and any suggestions for reform these may provide for India?
3) What are some recommendations for businesses to ensure legal compliance with trademark law while engaging in comparative advertising?

Legal Framework in India Governing Trademark Disparagement through Comparative Advertising

A "trade mark" is defined by S. 2(1)(zb) of the Trademarks Act 1999 as "a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include the shape of goods, their packaging and combination of colours." Examples of some trademarks in the F&B sector are "Amul" for milk products, "Bisleri" for packaged drinking water, and "Cadbury" for confectionery. Trade marks help consumers identify the source of the product, its quality, and function as a marketing tool (Bently & Sherman, 2004).

A trademark is said to be "disparaged" when it is harmed with an intent to gain an unfair commercial advantage. Black's Law Dictionary defines "disparagement of goods" as "a statement about a competitor's goods which is untrue or misleading and is made to influence or tends to influence the public not to buy" (Black, 1968). Such a statement could be made through derogatory use in marketing, false association or dilution, public statements or

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

campaigns, social media and influencer marketing, or through comparison in commercial advertising.

Comparative advertising is a "term used to describe advertisements where the goods and services of one trader are compared with the goods and services of another trader" (Bently & Sherman, 2004). These advertisements usually emphasize differences in value, quality, price, features, health benefits, taste, smell, effectiveness, etc. In doing so, a competitor's products are often referred to using their trademark. If done in a disparaging manner, it is legally actionable. A hypothetical example could be Nestlé naming Nissin Foods in their television ad campaign and stating that their Maggi noodles taste better and have better nutritional value than Nissin's Top Ramen.

The legal remedies for trademark disparagement are a temporary or permanent injunction to restrain the offending advertisement, financial relief through compensatory or punitive damages, a rendition of accounts for profits earned by the defendant as a result of the disparaging conduct, delivery-up of infringing materials for destruction, or modifications to the advertisement, such as the removal of specific derogatory phrases or visuals.

This paper utilises the concepts discussed above, namely trademark, disparagement, and comparative advertising. The scope of this paper is trademark disparagement by F&B brands through comparisons made between products through commercial advertising, either directly by naming the competitor or indirectly through visuals or slogans, specifically in the F&B sector. To start with, comparative advertising of trademarks in India is regulated by certain legal provisions (Gogisetti, 2021) and judicial tests, which are elaborated below.

I) Legal Provisions

In the Trademarks Act of 1999, S. 29(8) and 30(1) are the provisions that would apply to comparative advertising. On one hand, S. 29(8) prohibits

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

taking unfair advantage of a competitor's mark and contrary to honest commercial practices, or harming its distinctive character or reputation. On the other hand, S. 30(1) allows honest use of competitors' trademarks for comparative advertising, as long as it does not unfairly take advantage of or is detrimental to the distinctive character or repute of the trademark. The second legislation is the Consumer Protection Act 2019, in which Section 2(47) of the Act defines "unfair trade practices" to include misleading or disparaging comparisons, and empowers the Central Consumer Protection Authority (CCPA) to penalise such advertisements. Thirdly and last, Chapter IV of the ASCI Self-Regulation Code 1985 which applies generally to all sectors, permits comparative advertising to encourage healthy competition if certain conditions are met. These conditions include that the ad must clearly specify the features being compared, avoid unfair advantage, be factually accurate and substantiated, not mislead consumers, and not insult or denigrate rival products, directly or indirectly (Code for Self-Regulation of Advertising Content in India, 1985).

II) Judicial Tests

The key Indian cases that establish the legal test for lawful comparative advertising include: Reckitt & Colman India v. M P Ramachandram (1999); which allows puffing and comparison of advantages but prohibits slander or defamation, PepsiCo India Holdings v. Hindustan Coca-Cola (2003); focusing on "intent, manner, and storyline" of the advertisement, Dabur India v. Colortek Meghalaya (2010) and Colgate Palmolive Co v. Hindustan Unilever (2013) highlighting the ordinary person test where ads must be viewed as a whole from a reasonable viewer's perspective, Havells India v. Amritanshu Khaitan (2015); which tests whether an advertisement can deceive its intended audience and influence economic behaviour of consumers or harm competitors, and Hindustan Unilever v. Reckitt Benckiser (2013) which sets out tests for trademark disparagement including truthfulness, intent, overall consumer perception, and contextual analysis.

Website: https://cukjls.cuklaw.in/
Email: editor.cukjls@cuk.ac.in

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

While these provisions and judicial tests determine whether there is disparagement, there are other sector-specific considerations that judges cite when deciding disparagement in the F&B sector. Before Indian case law is analysed to identify these considerations, international perspectives are explored to provide comparative insights into how three foreign jurisdictions handle comparative advertising in the F&B sector.

Comparative International Perspectives

Exploring international jurisdictions enriches a scholarly analysis of trademark disparagement. In some jurisdictions, there are sector-specific regulations and case law for the F&B sector. In the United States and the European Union, there are specialised statutory provisions and case law governing F&B advertising. A number of judicial tests used by Indian courts originate from precedents in the United Kingdom. While India has case law, there is no statute or regulation specifically for F&B brands advertising in India. A study of these foreign jurisdictions provides comparative insights into how these countries are dealing with comparative advertising in the F&B sector and may offer some inspiration for India.

I) The United Kingdom (UK)

In the UK, comparative advertising in the F&B sector is regulated not only by general trademark and advertising law, but also by sector-specific regulation. This is set out in Section 15 of the CAP Code (UK Code of Non-broadcast Advertising and Direct & Promotional Marketing, 2010). Under this framework, comparative nutrition claims must compare the claimed nutrient against a range of foods within the same category that do not otherwise qualify for a nutrition claim, and a single competing product may be used as the sole point of comparison only when it is representative of its category. Any claims that cast doubt on the safety or nutritional adequacy of a competitor’s product are prohibited. Comparisons must not discourage consumers from choosing options such as fresh fruit and vegetables, nor disparage good dietary practice.

Central University of Karnataka
Journal of Legal Studies (CUKJLS)
Volume I (Summer Issue - 2)
January to June 2026

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

II) The United States of America (US)

Section 43 of the Trademarks Act 1946 governs false and comparative advertising claims in the US. This section imposes liability where a representation in commercial advertising misrepresents the nature, characteristics, or qualities of one's own or another's goods, and is likely to deceive confusion or deceive consumers as to the products being compared (Trademark Act, 1946). The Federal Trade Commission (FTC) separately encourages truthful comparative advertising on objectively measurable attributes such as price or taste, applying its Deception Test, which asks whether a representation or omission is likely to mislead a reasonable consumer acting reasonably under the circumstances, and whether that representation is material to the consumer's purchasing decision.

In Pizza Hut, Inc. v. Papa John's International, Inc. (2000), Pizza Hut brought a Lanham Act false-advertising claim against Papa John's over its "Better Ingredients. Better Pizza." slogan and ads, which compared specific ingredients to those of Pizza Hut's. Special interogatories specifically found the "sauce" and "dough" ad campaigns misleading, but the Fifth Circuit vacated and remanded the case. The case remains a leading authority on the line between non-actionable puffery and actionable comparative claims in US F&B advertising.

III) The European Union (EU)

The EU provides a harmonised regulatory environment in its Directive 2006/114/EC, which authorises comparative advertising if it objectively compares material, relevant, and verifiable features and does not discredit or denigrate a competitor's mark (Directive 2006/114/EC, 2006). Decisions of the Court of Justice of the European Union (CJEU), such as the De Landtsheer Emmanuel SA case (2007), illustrate the judicial treatment of F&B advertising. In this case, a Belgian brewer marketed a beer named "Malheur Brut Réserve," without naming any competitor, but using terms such as

Website: https://cukjls.cuklaw.in/
Email: editor.cukjls@cuk.ac.in

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

"BRUT" and "RÉSERVE," which could be understood as the prestige and method of production associated with Champagne. The CJEU held that such a reference to a particular type of product can amount to comparative advertising, even without naming a specific competitor, so long as an undertaking or its goods can be identified as the subject of the reference by a viewer. This decision is significant for the F&B sector because it confirms that comparative advertising rules extend beyond direct brand-to-brand comparisons to category-level, heritage-based, or production-method claims, a pattern especially common in F&B marketing.

Analysis of the international comparative framework surrounding comparative advertising in the F&B sector shows that this sector has sector-specific regulations and judicial tests for F&B advertising in many countries. The relevant conclusion is that judicial assessment of F&B trademark disparagement through comparative advertising is distinct, which supports this paper's endeavour to find the same in the Indian scenario. The analysis of Indian cases to unearth sector-specific considerations of the Indian judiciary is undertaken in the following sections, along with observed judicial trends, suggestions for legal reform, and recommendations for F&B businesses to ensure compliance with the law.

Analysis of Indian Cases of Trademark Disparagement through Comparative Advertising in the F&B Sector

Comparative advertising is part of a brand strategy used to communicate information that creates an association (Raj & Noorani, 2020) and encourages consumers to buy one company's product over a competitor's (Desai, 2012). However, disparaging comparisons have led to several cases in the F&B sector (as well as other sectors), many of which were filed by reputable brands. Now that the laws and judicial tests to determine disparagement through advertising are understood, in this section, important F&B cases will be analysed to identify what sector-specific considerations have been cited by the courts in these cases. Firstly, cases where disparagement was found and cases where it

Website: https://cukjls.cuklaw.in/
Email: editor.cukjls@cuk.ac.in

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

was not will be examined, as this helps delineate the nuanced boundary between lawful comparative advertising and unlawful disparagement.

I) Cases Where Disparagement Was Found

In comparative advertising disputes in the F&B sector, Indian courts have emphasized certain sector-specific factors. A key factor is the heightened sensitivity when it comes to this sector, because the products are directly linked with consumer health and well-being, and are often targeted at children or elderly people, among other vulnerable groups. For instance, in GlaxoSmithKline Consumer Health Care v. Heinz India (2006), the High Court (HC) of Calcutta observed that both Horlicks and Complan were marketed as health food drinks primarily for children. Complan claimed that it offered “100% more milk protein,” which was projected through visuals of a growing cup of Complan against a stagnant, murky cup of “Brand H.” The court held that such representations were not merely exaggerations but conveyed scientific assertions about child growth, a highly specialised field requiring expert evidence. This makes making misleading claims particularly grave in this industry.

Similarly, in Gujarat Cooperative Milk Marketing Federation v. HUL (2017), Amul’s commercials suggested that frozen desserts contained 100% Vanaspati. “Vanaspati” is a term that is usually associated with unhealthy hydrogenated oils, which often invokes health risks in the minds of viewers, which the court deemed disparaging. The Gujarat HC emphasised that consumer perceptions of health and scientific nuance can be easily distorted in F&B advertising, misleading consumers who rely on common parlance rather than technical definitions.

In Horlicks Ltd v. Zydus Wellness Products (2020), the Delhi HC again confronted protein-based comparisons, noting that while “per-serve size” comparisons may be accepted industry practice, the medium of a six-second television commercial without a disclaimer created a misleading impression

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

of Horlicks' inferiority. In HUL v. Abbott (2024), the Bombay HC recognized that nutritional beverages like "Horlicks Diabetes Plus" and "Ensure Diabetes Care" were "high science" products aimed at diabetic patients, sold largely through pharmacist or expert recommendations. The WhatsApp campaign in this case featuring an expert figure dismissing the plaintiff's product, was found deliberately disparaging given its potential to influence consumer choice in a niche market. Even packaging in the case of Unibic v. Britannia (2008) was found to play an important role in this sector of fast-moving consumer goods, especially since it is easily accessible to large, diverse populations.

Thus, the judiciary has developed a consistent line of cases dealing with advertising in the F&B sector. Claims in this sector are under heavy scrutiny because misleading or denigratory comparisons can adversely impact consumer health, especially vulnerable demographics. Disparaging advertisements are legally actionable under trademark law.

II) Cases Where No Disparagement Was Found

In cases where no disparagement was found, the courts still considered some factors unique to the F&B sector. Nutritional and compositional claims attract heightened scrutiny because they directly relate to the health and safety of consumers. For e.g., in Horlicks v. Heinz India (2019), the Delhi HC emphasized that protein content in health drinks must be compared based on "per serving" size, according to food safety regulations, and not arbitrary weights, so as to avoid misleading consumers. Similarly, in Marico v. Adani Wilmar (2013), claims about oryzanol content in cooking oils were upheld as permissible scientific comparisons only when they are truthful and verifiable.

Finally, courts allow puffery, especially when claims cannot be proven false. Shafiulla (2013) defines "puffery" as exaggerated superlatives that reasonable consumers do not take literally or seriously, such as calling coffee as "the world's best" or an ice-cream as "children's favourite." In PepsiCo v.

Central University of Karnataka
Journal of Legal Studies (CUKJLS)
Volume I (Summer Issue - 2)
January to June 2026
ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

Hindustan Coca Cola (2003), Pepsi described its carbonated beverage as a "sweet" or "children's drink". This was found to be acceptable promotional puffery, and not legally actionable disparagement. Lastly, in Zydus v. Dabur (2023), the Delhi HC held that factually accurate claims, such as "25% more glucose," are not disparaging.

Thus, the courts require F&B brands to maintain consumer safety, scientific accuracy, and legal compliance.

Judicial Considerations Specific to the F&B Sector

Trademarks in the F&B sector carry immense value (Kulkarni, 2018). There are certain considerations specific to the F&B sector, which have been cited by Indian courts in their decisions on trademark disparagement through comparative advertising in this sector. Identified and derived from the preceding analyses, these considerations are listed below.

I) F&B Sector-Specific Considerations in Cases of Trademark Disparagement Through Comparative Advertising

For analytical clarity, the findings are grouped into five logically distinct categories:

1) Nutritional and Health Impact

- Direct and extended impact on health and safety (HUL v. Amul; Marico v. Adani)
- Role in growth and development (Horlicks v. Zydus)
- Nutrition profile and composition (GSK case; HUL v. Abbott; Horlicks v. Heinz)
- Appeal to known health risks (HUL v. Amul)
- Energy boosting capacity (Zydus v. Dabur)
- Purity of the product (HUL v. Amul)

Website: https://cukjls.cuklaw.in/
Email: editor.cukjls@cuk.ac.in

Central University of Karnataka
Journal of Legal Studies (CUKJLS)
Volume I (Summer Issue - 2)
January to June 2026

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

2) Product Presentation

- Packaging including design, safety, and branding (Unibic v. Britannia)

3) Audience and Market Targeting

- Targeting of specific/vulnerable groups such as children, ailing adults, athletes, and those with special dietary needs (GSK case; HUL v. Abbott)
- Factual and meaningful comparisons for differences in product formulation (Adani v. Wilmar)
- Alignment with industry standards such as "per serving size" (Horlicks v. Heinz; Horlicks v. Zydus)

4) Scientific and Expert Backing

- High science products such as functional foods, supplements, nutraceuticals (HUL v. Abbott)
- Expert recommendations, certifications, and endorsements (GSK case)

5) Sensory and Experiential Attributes

- Taste and palatability (PepsiCo Inc case)

This grouping reflects the multidimensional approach courts use when analysing issues in F&B advertising.

II) Judicial Trends

Considerations leading courts to find disparagement in F&B cases include health and nutrition claims tied to consumer safety, as seen in GSK v. Heinz (2006), HUL v. Abbott (2024), and Horlicks v. Heinz (2019). Claims about

Website: https://cukjls.cuklaw.in/
Email: editor.cukjls@cuk.ac.in

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

health, essential nutrition, safety of vulnerable groups such as children and ailing adults, expert recommendations, and regulatory non-compliance played a larger role in leading to findings of disparagement than other factors such as packaging, taste, and energy-boosting capacity. Courts have valued truthful, verifiable comparisons of factual product characteristics, such as protein or sugar content (Marico v. Adani Wilmar, 2013), and compliance with industry norms, such as serving sizes. They have also accepted promotional puffery, as in PepsiCo v. Hindustan Coca-Cola, 2003.

Suggestions and Recommendations

I) Reformatory Suggestions

A statutory definition of "comparative advertising" under trademark law would clarify the legal scope of the term, thereby reducing ambiguity for F&B businesses among other businesses (Raj & Noorani, 2020). A new ruling from the Supreme Court of India would provide valuable guidance on the law of trademark disparagement in comparative advertising, particularly for F&B brands. India could consider joining the UK, US, and EU, among other foreign jurisdictions, in regulating F&B comparative advertising to ensure trademark protection.

II) Sector-Specific Recommendations for F&B Businesses

Comparative advertising makes an impact for brands trying to gain consumer trust (Gitte, 2023), among a large heterogeneous consumer base in India. However, brands must advertise responsibly and within the scope of applicable laws and standards. It is important for F&B businesses to compare products based on industry practices, such as recommended "serving sizes". This helps avoid misleading or dangerous claims (Horlicks v. Heinz, 2019). Any claims asserted by these businesses must be supported by authoritative sources like the National Accreditation Board for Testing and Calibration Laboratories (NABL) labs or qualified nutritionists. For example, in the recent case of San Nutrition v. Arpit Mangal, the defendants compared the plaintiff's product label claims, which claimed to contain certain percentages of protein and carbohydrates, with accredited laboratory tests that revealed much lower levels of actual protein and much higher levels of carbohydrates. The Delhi High Court found no disparagement since it was the substantiated truth. Based on this ruling, businesses must verify and take absolute legal responsibility for factual claims on their labels. The judgment in San Nutrition also cleared content that can be perceived by consumers as satirical in nature, because satire is protected under the right to freedom of speech in Article 19(1)(a) of the Indian Constitution. Additionally, scientific claims for nutraceuticals particularly need strict evidence, as per Zydus v. Dabur (2023). Hence, nutritional advantages claimed should be factual, avoiding implications of competitor harm (Horlicks v. Heinz and Marico v. Adani Wilmar). Truthful and verifiable claims based on facts are usually safe from legal charges.

Finally, product packaging used by F&B brands should maintain distinctive branding without mimicking competitors' products so as to avoid visual disparagement, following Unibic v. Britannia (2008) and Marico v. Adani Wilmar (2013). For example, distinctive colours, logo, typography and layout should be used. Overall, advertising messaging must responsibly target audiences, include contextual guidance and disclaimers about serving sizes, and avoid manipulating vulnerable groups.

Conclusion

In the F&B sector, where brand perception is paramount, the offence of trademark disparagement is particularly sensitive (Mawandiya, 2022). In matters like GSK v. Heinz and Horlicks v. Zydus, trademark disparagement was found on the ground of misleading comparative claims. In contrast, cases like Horlicks v. Heinz, Marico v. Adani Wilmar, and Zydus v. Dabur upheld comparative advertising when the claims were factually accurate and responsibly presented, without exploiting consumers' vulnerabilities.

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

The Indian judiciary's treatment of cases involving trademark disparagement through comparative advertising reveals sector-specific factors in deciding such cases in the F&B sector. These factors can be broadly categorised into the five findings of this paper, which are: (1) nutritional and health impact, (2) product presentation, (3) audience and market targeting, (4) scientific and expert backing, and (5) sensory and experiential attributes. These cover concerns about consumer health and safety, nutritional content, scientific validation, and packaging similarity.

It is highly recommended that F&B businesses ensure evidence-based nutritional claims, expert-backed scientific assertions, distinct packaging, and considerate messaging that respects consumer safety when advertising their products. These approaches promote ethical marketing practices within the F&B industry.

Indian F&B brands would benefit from greater statutory clarity, a new Apex Court ruling as definitive guidance, and sector-specific regulation for the F&B industry. Laws in foreign jurisdictions tailored to comparative advertising in the F&B sector could inspire sector-specific regulation in this area, informed by those laws. These changes would improve trademark protection and fair advertising in India. Ultimately, in comparative advertising, the courts' recipe is simple. Avoid denigrating or mimicking your rivals and highlight your own ingredients using truthful, verifiable facts.

References

Ahuja, V. K. (2017). Law relating to intellectual property rights (3rd ed.). LexisNexis.

Bafna, P. (2018). Few Indian case studies on legal aspects of comparative advertising. IJCRT, 6(1).

Bently, L., & Sherman, B. (2004). Intellectual Property Law (2nd ed.). Oxford University Press.

Black, H. C. (1968). Black's Law Dictionary (Rev. 4th ed.). West Publishing Co. https://blacfoundation.org/pdf/Black's-Law-4th-edition-1891.pdf.

Cambridge Dictionary. (n.d.). Comparative advertising. In Cambridge Dictionary. Retrieved September 2025, from https://dictionary.cambridge.org/dictionary/english/comparative-advertising.

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485

Code for Self-Regulation of Advertising Content in India, ch. IV (1985).

Colgate Palmolive Co. v. Hindustan Unilever, 137 DRJ 361 (2013).

Consumer Protection Act, No. 35 of 2019, § 2(47) (India).

Dabur India v. Colortek Meghalaya, 42 PTC 88 (2010).

De Landtsheer Emmanuel SA v. Comité Interprofessionnel du Vin de Champagne and Veuve Clicquot Ponsardin SA, Case C-381/05, (2007) E.C.R. I-3115.

Desai, D. R. (2012). From trademarks to brands. Florida Law Review, 64, 981.

Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version). (2006). Official Journal of the European Union, L376, 21–27.

Gitte, A. (2023). Analysis of advertising regulations for consumer protection in India. International Journal of Law Management & Humanities, 6, 57.

Glaxo Smith Kline Consumer Health Care Ltd v. Heinz India Private Ltd and Ors, MANU/WB/0450/2006 (2006).

Gogisetti, V. N. R. (2021). Comparative advertising – Boon or bane to consumer interest? ASEAN Journal of Legal Studies.

Havells India v. Amritanshu Khaitan, CS(OS) 107/2015 (2015).

Hindustan Unilever Limited v. Abbott Laboratories and Ors, MANU/MHOR/14923/2024 (2024).

Hindustan Unilever Ltd. v. Gujarat Co-operative Milk Marketing Federation Ltd., (2017) SCC OnLine Bom 2572.

Hindustan Unilever v. Reckitt Benckiser, 1 CHN 286 (2013).

Horlicks Limited and Ors v. Zydus Wellness Products Limited, MANU/DE/1046/2020 (2020).

Horlicks Ltd and Ors v. Heinz India Pvt Ltd, MANU/DE/0944/2019 (2019).

India. (1950). *The Constitution of India*.

Kulkarni, S. R. (2018). Chapter 15: IPRs in respect to food and beverages. In Innovations in technologies for fermented food and beverage industries. Springer.

Mamgain, & Chaudhary, S. (2025, September 12). Generic brand disparagement. Bar and Bench. https://www.barandbench.com/view-point/generic-brand-disparagement

Marico Limited v. Adani Wilmar Ltd, MANU/DE/0933/2013 (2013).

Mawandiya, S. K. (2022). Compare, not disparage: Analysing the grey area in trademark law. International Journal of Law, Management & Humanities, 5, 1446.

Patil, A. R., & Patil, A. A. (2018). International legal framework on comparative advertising in European Union, United States and India – A contemplative comparative study. International Journal on Consumer Law and Practice, 6(5).

Pepsi Co., Inc. and Others v. Hindustan Coca Cola Ltd. and Another, (Del 2003).

Pizza Hut, Inc. v. Papa John's International, Inc., 227 F.3d 489 (5th Cir. 2000).

Raj, P., & Noorani, M. S. (2020). Legal implications of comparative advertisement in India. International Journal of Management, 11(12), 3624–3634.

Reckitt & Colman India v. M P Ramachandram, PTC (19) 741 (Cal.) (1999).

San Nutrition Private Limited v. Arpit Mangal and Ors, MANU/DE/2962/2025 (2025).

Sen, I. (2019). Comparative advertisement and trademark infringement: A comparative analysis. IJLSI, 1(2).

ISSN (Online): 3139-4345
ISSN (Print): 3139-4485
Shafiulla, B. (2013). Comparative advertising: An analysis of cases of disparagement. The IUP Journal of Marketing Management, 12(2), 62–71.
Snow, N. (2016). Free speech & disparaging trademarks. Boston College Law Review, 57, 1639.
Tata Press Ltd v. Mahangar Telephone Nigam Ltd, AIR (SC) 2438 (1995).
Trademark Act of 1946, §43 (United States).
Trademarks Act, No. 47 of 1999, §§ 29(8), 30(1) (India).
UK Code of Non-broadcast Advertising and Direct & Promotional Marketing of 2010 (United Kingdom).
Unibic Biscuits India Pvt Ltd v. Britannia Industries Limited, MANU/KA/0240/2008 (2008).
Warrier, N. A., & Saxena, B. (2024). An analysis of comparative advertisement and trademark law in India. International Journal of Humanities Education, 12(2).
Zydus v. Dabur, SCC OnLine Del 2664 (2023).