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AN ANALYSIS ON COMPARATIVE ADVERTISING AND CONSUMER PROTECTION: COLGATE PALMOLIVE (INDIA) LTD. V/S HINDUSTAN LEVER LTD (1999)

AUTHORED BY - JEEVA KISHOR¹ & ATHUL RAJ²

I. ABSTRACT

The case, Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd³ primarily deals with the issues of deceptive advertisements and the legal implications of disparaging the competitors, within the purview of the MRTP Act, 1969⁴. The commentary seeks to explore, the way SC court has adopted a nuanced perspective of Balancing commercial speech rights and the act of misleading the consumers through unfair trade practices⁵. The case becomes significant when it turns out, mere comparisons into the act of disparagement, which tends to unfairly prejudice the rival brands. The commentary delves into the principal question that whether the claims asserted by one party are truthful and verifiable facts rather than frivolous claims. By taking a thorough appraisal over the MRTP Commission's Inter interlocutory order and further reasoning, the court explains how the case redefines corporate accountability in marketing activities by safeguarding consumer interests. The author also examines the significance of evolving advertising norms under the CPA, 2019⁶, by contextualising the judgment within the framework of consumer law. Ultimately the commentary delves into the explanation of, how the precedent has shaped the role of ethical advertising practices within India's dynamic commercial advertising landscape. Furthermore the commentary also seeks to broadly evaluate the judgement within the purview of Consumer Protection Act, 2019 and the regulatory framework of that of Advertising Standards Council of India (ASCI). This precedent hence reaffirms the consumer trust as well as try preserving ethical advertising within India's commercial advertising landscape.

¹ 6th semester, BCOM LLB (Hons.), School of Legal Studies, CUSAT

² 6th semester, BBA LLB (Hons.), School of Legal Studies, CUSAT

³ *Colgate Palmolive (India) Ltd v Hindustan Lever Ltd* AIR 1999 SC 3105

⁴ Monopolies and Restrictive Trade Practices Act 1969

⁵ Monopolies and Restrictive Trade Practices (Amendment) Act 1984, s 36A

⁶ Consumer Protection Act 2019

II. KEYWORDS

Comparative Advertising, Product Disparagement, Unfair Trade Practices, Consumer Protection, Advertising Ethics

III. INTRODUCTION

Advertisement is “a form of public notice or an announcement of sorts in a public medium, aimed at promoting a product, service, or event.”⁷ Comparative advertising is a unique form of advertising, wherein there is a comparison of goods or services of a trader/undertaking with that of the other.⁸ It can be viewed in as a strategic technique which involves highlighting their advantages over their rival products. Hence Comparative advertisement can lead to two major circumstances:

- A) Puffery
- B) Disparagement.

Puff refers to an exaggerated promotional statement that is not intended to be taken literally as a factual representation.⁹ It is a form of exaggerated praise of one’s own product or service is generally allowed both in the implicit as well as explicit form of comparative advertising.¹⁰

“Disparagement” is an act to connect unequally or to dishonour someone or something by comparison. Disparagement is, thus, a false or deleterious statement/comment that discredits, belittles from the reputation of another’s product or business.¹¹ Disparagement of goods per se is not defined in the statute, however the same can be understood as false and misleading statement about a rival’s goods made with the purpose of swaying consumers not to buy the product or service. Such acts can therefore attract serious legal issues.¹²

Hence through this commentary, it is undertaken to understand how the judiciary has sought to protect the consumer interest by allowing permissible puffery.

⁷ ‘Advertisement’ (Oxford Dictionaries) <http://www.oxforddictionaries.com/definition/english/advertisement> accessed 17 October 2025

⁸ Lionel Bently and Brad Sherman, *Intellectual Property Law* (3rd edn, Oxford University Press 2009) 937

⁹ ‘Legal Definition of Mere Puff’ (London Law) <https://www.london-law.co.uk/legal-definition-mere-puff/> accessed 25 October 2025

¹⁰ Abhimanyu Kumar, ‘Comparative Advertising in India, UK & US and Product Disparagement’ (2025) Manupatra Newslines Articles <https://docs.manupatra.in/newslines/articles/Upload/C7ABDE0F-D274-49C7-A257-C99077D0C680.pdf> accessed 20 October 2025

¹¹ ‘The Law Dictionary’ (TheLawDictionary.org) <http://thelawdictionary.org/> accessed 16 October 2025

¹² Zoya Nafis, ‘India: Comparative Advertising: How Far Can One Go?’ (Mondaq) <http://www.mondaq.com/india/x/371760/Trademark/Comparative+Advertising+How+Far+Can+One+Go> accessed 17 October 2025

IV. FACTUAL BACKGROUND

Colgate Palmolive (India) Ltd has been a prominent manufacturer of dental health products specifically known for its “Colgate Dental Cream”. From the outset, The promotional strategies of Colgate involved using various expressions such as “stops bad breath” and “fights tooth decay” etc. Later in 1985, Colgate formulated the concept of a “Suraksha Chakra” in its advertisements which rendered protection for individuals against all sought of dental ailments. Following that, in March 1997, Hindustan Lever Ltd. which manufactures “Pepsodent” in India, registered a complaint before the Advertising Standards Council of India (ASCI) alleging that the advertisements conceptualised by Colgate were absolutely deceptive and misleading. However, after the complaint being examined, it was perceived that no deceptive contents have been adopted by Colgate for generating the advertisement. Though the procedure adopted by ASCI allowed a review, HLL decided not to pursue the matter further.

Subsequently, on 15 October 1997, a complaint was lodged by Colgate against Hindustan Lever Ltd before Monopolies and Restrictive Trade Practices Commission (MRTP Commission). In the complaint petition, Colgate alleged that HLL’s advertisement for “New Pepsodent”, claiming that it had “102% more germ-fighting capability as compared to the leading toothpaste”, was perceived to be a clear case of disparagement intended to defame the reputation of Colgate's product and to mislead the consumers.

Thereafter, on 22 October 1997, a counter-complaint was again lodged by Hindustan Lever Ltd, Before MRTP Commission contending that the expressions, “germ fighter”, “fights tooth decay”, “stops bad breath” and the concept of “Suraksha Chakra” used in Colgate’s advertisements were false and misleading and amounted to unfair trade practises under the MRTP Act, 1969. Consequently, the MRTP Commission in exercise of its power under Section 12 A of the MRTP Act promulgated an interim order, restraining Colgate from using the expression Suraksha Chakra in its future advertisements. However, the HLL’s request for preventing Colgate from advertising its product altogether was rejected.

As a result, both the parties, being discontented with the commission’s ruling, have filed statutory appeals under Section 55 of the MRTP Act, leading the present case before the Supreme court.

V. ISSUES BEFORE THE SUPREME COURT

1. Whether the prerequisites of Section 12-A MRTP Act for granting a temporary injunction were fulfilled when the Commission restrained Colgate's use of "Suraksha chakra."
2. Whether the Commission erred in refusing HLL's prayer for a complete prohibition of Colgate Dental Cream advertisements alleging "germ fighter," "fights tooth decay" and "stops bad breath."
3. What principles govern the grant of interlocutory injunctions by the Commission, and were they correctly applied?

VI. ANALYSIS OF LAWS REGULATING COMPARATIVE ADVERTISEMENT

MRTP ACT, 1969

The Monopolies and Restrictive Trade Practices Act was enacted to curb monopolistic and restrictive trade practises, thereby safeguarding consumer rights in India. It was superseded by the Competition Act 2002 which provided more effective framework for resolving contemporary competition challenges.

Section 12A - It empowers the MRTPC to grant temporary injunction to prevent unfair trade practices, if such practices tends to harm the consumers or public in general.

It shall be applicable during the pendency of an inquiry before the Commission, when it is prima facie evident that the practice prejudices the public in general, traders as well as consumers.

Temporary injunction may exist until new orders are promulgated by the commission and the procedure for such promulgation, are governed by the Civil Procedure Code, 1908.

The commission also possess the power to grant ex parte injunction (without issuing notice to the opposite party) if the circumstances necessitates.

Section 36 A – This section provides the definition for unfair trade practices as “trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any services, adopts any unfair method or unfair or deceptive practice.”¹³

Section 55 – It grants remedy to those persons who have been aggrieved by specific orders or decisions of the commission, the right to appeal before the Supreme Court within 60 days from the date of the order.

¹³ Monopolies and Restrictive Trade Practices (Amendment) Act 1984, Act No 30 of 1984, s 36A

CODE OF CIVIL PROCEDURE, 1908

Order XXXIX of Code of Civil Procedure, 1908 is the provision that regulates the granting of temporary injunctions and interlocutory orders in civil proceedings. It empowers the court to issue temporary injunctions to prevent imminent danger and to protect the subject matter of a suit.

THE ASCI CODE

The Advertising Standards Council of India (ASCI) is a self-regulatory body which mandates that the advertisements to get strictly adhered to the code of standard regulation and ensures that they are honest, truthful and is not misleading the consumers in any means.

Under the code it is has been stated that that advertisements which contain comparisons with competing/rival manufacturers and sellers are permissible and allowed in the interests of energetic competition and free distribution of information, subject to the following requirements or prerequisites being satisfied:

- (a) It should be clear what feature of the advertiser's product or service is being compared with what feature of the competitor's/rival's product.
- (b) The subject matter of the comparison should not be chosen in such a way so as to bestow an artificial leverage upon the advertiser or so as to put forward that a better bargain is presented than is truly the case.
- (c) That the comparisons between the two advertisements are factual, true and capable of authentication.
- (d) That there is no possibility or likelihood of the consumer being confused or misled as a consequence of the comparison, the product being advertised or compared.
- (e) The advertisement should not unfairly disparage or discredit other products or services, advertisements or advertisers, directly or by insinuation.¹⁴

VII. CITED PRECEDENTS

***Wander Ltd. and Another v. Antox India P. Ltd (1990)*¹⁵**

The Supreme Court elaborated on the principles governing interim injunctions. The Court upheld that a prayer for interim relief is sought under two primary circumstances, when a legal right is claimed by the plaintiff and when the violation of such rights are alleged.

¹⁴ Parth Gokhale and Shriyani Datta, 'Comparative Advertising in India: Evolving a Regulatory Framework' (NUJS Law Review) <http://nujlawreview.org/wp-content/uploads/2015/02/parth-and-sheryani.pdf> accessed 15 October 2025

¹⁵ Wander Ltd and Anr v Antox India P Ltd [1990] 2 ARBLR 399 (SC)

Gujarat Bottling Co. Ltd. v. Coca Cola Co¹⁶

The court held that, The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests¹⁷:

- (i) whether the plaintiff has a prima facie case;
- (ii) whether the balance of convenience is in favour of the plaintiff; and
- (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

American Cyanamid Co. v. Ethicon Ltd (1975)¹⁸

In this case, The House of lords laid down a modern test for the interlocutory injunctions to be granted. Prior to this case, It was deemed necessary for the plaintiff to establish a strong prima facie case of infringement, demonstrate that damages would not constitute an adequate remedy, and prove that the balance of convenience lay in their favour.¹⁹

However the court in the American Cyanamid case held that, there is no need to determine that there has been a prima facie case for the plaintiff, instead it is only necessary to show that there has been a serious issue, which needs to be tried. Once the issue becomes established, the court then considers whether the damages would constitute an adequate remedy. This principal turned out to be an equitable approach that emphasized fairness and equity by the way of preventing irreparable harm to the individuals.

VIII. ANALYSIS

The legal battle between Colgate Palmolive (India) Ltd. and Hindustan Lever Ltd. (HLL) stands out as a landmark precedent in India's commercial advertising landscape. The advertising dispute and the subsequent promulgation of an interim order by the MRTP Commission led to a scenario where both parties, being aggrieved in their own ways, and thereby approached the Supreme court by means of statutory appeal under Section 55 of the MRTP Act.

The proceedings before the MRTP Commission and the successive ruling of the Supreme Court in 1999, redefined the frameworks of comparative advertising and the enforcement powers of

¹⁶ Gujarat Bottling Co Ltd v Coca Cola Co AIR 1995 SC 237

¹⁷ ibid

¹⁸ American Cyanamid Co v Ethicon Ltd [1975] AC 396

¹⁹ J T Stratford & Son Ltd v Lindley [1965] AC 269

regulatory bodies. The case formulated a judicial test with regard to the newly acquired power of the commission under Section 12 A of the act, where the court highlighted that the power of exercising, judicial discretion must be firmly grounded with substantial evidence.

I. The introduction of section 12 A

The MRTP Act originally didn't possess the power to grant the commission to issue temporary injunctions during the course of inquiry of any Unfair Trade Practices. This deficiency led pathways for abundant exploitation of the consumers and market in general by means of misleading advertisements running for extended periods before the final ruling could be delivered. Hence based on the recommendations of the Sachhar Committee, Section 12 A was enacted, which granted the commission discretionary authority to immediately cease unfair trade practises that existed in the market in different means. Hence the case, Colgate Palmolive (India) Ltd. V. Hindustan Lever Ltd. (HLL), which consisted of mutual complaints being alleged on each other on grounds of disparagement and unethical advertising, stands out as an appropriate medium for the application of newly acquired power of the commission.

II. The challenges posed

The dispute involved a complex set of allegations from both the sides and each allegation has led into promulgation of different rulings from the commission.

The initial dispute was over the claim of HLL stating that the "New Pepsodent" had "102% anti-bacterial superiority", thereby intending to indirectly defame Colgate dental cream. Colgate alleged this phrase to be disparaging and has caused unfair prejudice over their brand image and has misled their consumers.

During the pendency of the suit, A counter complaint was registered by the HLL against Colgate alleging the Suraksha Chakra used in their advertisements to be false and frivolous per se. It was because this imagery suggested, complete prevention of all sought of dental ailments, which was alleged to be false. Subsequently, there had been a promulgation of the interlocutory order, of banning the usage of the term "Suraksha chakra" in its ads. However all other phrases used by Colgate was rightly upheld by the Commission.

Hence this ruling, which aggrieved both the parties took the matter before the Supreme Court. The court rightly allowed the appeal pursued by Colgate and rejected that of HLL, which reinforced the significance of proving the technical claims before it is being advertised, so that the consumers are not deceived or misled by any frivolous claims.

The supreme court observed that, The interlocutory remedy by way of a grant of an order of

injunction is intended to preserve and maintain status quo in the rights of the parties and to protect the plaintiff, being the initiator, of the action against incursion of his rights and for which there is no appropriate compensation being quantified in terms of damages.²⁰ It is a supplementary petition filed during the pendency of the main proceedings, seeking reliefs of a temporary or provisional nature. These applications are crucial in ensuring justice is not defeated by procedural delays or undue advantage taken by either party²¹, and not to unfairly prejudice the other party.

III. The Supreme Court's Ruling (August 1999)

The MRTP Commission's interim order restraining the advertisements of Colgate were completely dismissed by the Supreme court, since it was lacking necessary evidentiary value. According to Regulation 76 of the MRTP Regulations, it states that an application for grant of temporary injunction ought to be supported by an affidavit stating therein the circumstances under which the trade practices can be ascribed to be prejudicial to the interest of the public, consumer etc.²²

It also Provides a safeguard to the effect that the Commission before making an order under Section 12-A, may direct the Director General of Investigation to make an investigation and submit a report to the Commission and the Commission, upon consideration thereof, may pass appropriate orders in regard thereto.²³ All these essentials prescribed has not been adhered to in the present scenario.

The court also highlighted the absence of any consumer harm caused implying that no consumer interest has been misled by the advertising expression "Suraksha Chakra".

Additionally, the Commission has also failed to appropriately substantiate the claims related to the specific symbols or imagery being depicted. It was found not to have thoroughly examined before the injunction was issued to restrain the advertisement.

By highlighting the absence of robust evidence, The Supreme Court invalidated the restraint imposed on Colgate. The court concluded that, this advertisement comes only within the purview of permissible claims and hence cannot be invalidated.

The Supreme Court also dismissed HLL's appeal to completely ban the advertisement of the

²⁰ Advocate (Dr) Abhishek Gandhi & Team, 'Understanding Interlocutory Applications: A Comprehensive Legal Insight into Interim Relief and Procedure' (18 July 2025) <https://advocategandhi.com/understanding-interlocutory-applications-a-comprehensive-legal-insight-into-interim-relief-and-procedure/> accessed 25 October 2025

²¹ *ibid*

²² Monopolies and Restrictive Trade Practices Regulations 1991, reg 76

²³ Monopolies and Restrictive Trade Practices Regulations 1991, reg 77(2)

entire Colgate products, emphasizing that the regulatory bodies must be proportionate with its remedies.

IX. CONCLUSION

The case of Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., serves as a landmark judgement in rendering out impeccable clarity between comparative advertising and product disparagement within Indian advertising landscape. The precedent fosters a delicate balance between the freedom of expression and the need to safeguard the consumer interest against unfair trade practices. The Supreme court by setting aside the MRTP Commission's interlocutory order, stipulated that discretion under Section 12 A must be exercised carefully by ensuring procedural fairness. Furthermore, the judgement emphasized upon ethical advertising norms in India, thereby emphasizing transparency and accountability.

