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COMPARATIVE ADVERTISING AND TRADEMARK PARODY IN INDIA: NAVIGATING THE THIN LINE BETWEEN HUMOUR AND DISPARAGEMENT

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ABSTRACT

The Intersection of comparative advertising and trademark parody presents one of the most challenging issues in Indian intellectual property. Comparative advertising enables traders to highlight the superiority of their products by drawing comparisons with competitors, while parody employs humour, satire, or ridicule to attract attention and entertain. These two strands of advertising informational comparison and creative exaggeration often converge in practice, creating a blurred line between lawful commercial communication and unlawful trademark infringement.

The research problem lies in the doctrinal ambiguity of Indian law. Section 30(1) of the Trade Marks Act, 1999¹ expressly allows comparative advertising if conducted according to honest practices, but it makes no mention of parody. As a result, Indian courts have improvised, producing inconsistent rulings. Some judgment favour strict protection of brand reputation and consumer clarity, while others tolerate parody as a legitimate form of commercial expression.

The objectives of this study are fourfold:

- i. To analyse the statutory framework governing comparative advertising in India.
- ii. To examine how Indian courts have dealt with comparative claims and parody in advertising.
- iii. To assess Indian jurisprudence in light of U.S. and EU models and
- iv. To propose doctrinal reforms that reconcile trademark integrity with creative freedom.

The methodology adopted is doctrinal, based on analysis of statutes, case law, and secondary scholarship. The scope is limited to Indian law, with selected comparative insights, while the limitation lies in the absence of empirical consumer perception studies.

¹ Trade Marks act 1999, § 30, cl.1, No. 47, Acts of parliament 1999

The findings suggest that Indian jurisprudence reflects two competing strands a restrictive approach that emphasizes brand reputation and consumer clarity, and a more liberal approach that tolerates parody as a form of creative commercial expression. Comparative analysis shows that other jurisprudence provide clearer recognition of parody, either through constitutional protection or statutory exceptions.

The paper concludes that Indian requires a structured doctrinal test and statutory reform to address this gap. By explicitly recognizing parody as a qualified defence and adopting a consistent evaluative framework, Indian law can strike a balance between trademark integrity, consumer protection, and creative freedom in advertising.

KEYWORDS: Advertising Law, Comparative Advertising, Intellectual Property, Parody, Trademark Law

INTRODUCTION

Advertising is not only a tool of commerce but also a cultural and social phenomenon. It conveys informative, shapes consumer perceptions, and influences market behaviour. In today's competitive environment, advertisers deploy various techniques to capture consumer attention, two of which are comparative advertising and trademark parody. Comparative advertising involves drawing explicit or implicit comparisons between one's own goods and those of competitors, often to highlight superiority in quality, price or features. Parody, on the other hand, employs exaggeration, humour, or satire to entertain, critique, or differentiate. Both strategies enhance creativity in the marketplace, but when combined they raise profound legal questions.

The research problem at the heart of this paper is the lack of clarity in Indian law regarding the status of parody in comparative advertising. Section 30(1) of the Trade Marks Act, 1999² expressly permits comparative advertising provided it is in accordance with honest practices and does not unfairly harm a competitor's reputation. Yet, the statute is silent on parody. As a result, courts are compelled to interpret parody within broader doctrines such as disparagement, confusion, or dilution. This judicial improvisation has produced inconsistent outcomes at times prioritizing consumer protection and brand reputation, while at the other times tolerating

² Trade Marks act 1999, § 30, cl.1, No. 47, Acts of parliament 1999

parody as a form of creative commercial speech. The resulting uncertainty burdens advertisers, brand owners, and consumer alike.

This study has four objectives. First, to look into the statutory framework underpinning comparative advertising in India, especially against the limitations and ambiguities of Section Second, to analyse the court's approach to comparative advertising and parody and observe how the courts have negotiated this blinded edge. Third, to evaluate Indian jurisprudence concerning comparative models from the United States and the European Union, wherein parody gains much clearer recognition. Fourth, to suggest reforms that would offer a balanced protection scheme for trademarks and enable reasonable expression in the competitive marketplace. The research question that drives this inquiry is: To what extent does Indian law permit parody in comparative advertising, and how should the law reconcile the tension between brand protection and free expression?

There is a doctrinal methodology adopted for this paper. This paper also relied on statutory interpretation cases, judicial precedents, and secondary scholarship to analyse the subject matter. The relevant scope of the study is Indian trademark law with selected comparisons to U.S. and EU law, while the limits to this study include the exclusion of data-based research on consumer perception and industry-specific case data.

The research is timely and significant. In this digital era, advertisements have transcended the confines of television and print media to flourish in cyberspace where memes, viral videos, and satirical campaigns have been reigning supreme. The growing use of parody in digital marketing contradicts the need for doctrinal certainty. Failure to address this would surely either chill creative expression or dilute trademark dignity. By situating Indian law in its constitutional, statutory, and comparative contexts, this paper attempts to imply the balanced framework which safeguards intellectual property while accepting humour as a modern advertisement strategy.

Conceptual and Historical Background

Comparative advertising refers to advertisements that explicitly or implicitly compare one product to another, highlighting differences in quality, price, or features. Its rationale lies in consumer welfare, informed choices and healthy competition. Such advertising, when conducted fairly, plays an important role in liberalized economy where transparency and competition are vital for consumer empowerment. By inviting consumers to compare features

directly, comparative advertising strengthens market efficiency and prevent monopolistic practices, but it simultaneously raises the risk of crossing into disparagement when exaggeration or ridicule is employed.

Trademark parody involves humorous. or satirical imitation of a brand or mark, often exaggerating its elements to entertain, critique, or differentiate. Parody has both commercial and expressive functions, it can lampoon competitors while engaging consumers through humour. In the context of modern advertising, parody has also become an important tool for viral marketing and digital campaigns, where humour and satire spread rapidly across social media platforms. This transformative role of parody highlights its growing cultural and commercial significance, extending beyond traditional advertising into the sphere of online memes, influencer promotion, and consumer generated content.

Historically, Indian courts were sceptical of comparative advertising, viewing it as disparagement of competitors. With liberalization and global marketing trends, comparative claims became more common, through parody remained under theorized. The evolution reflects a larger transition in Indian intellectual property jurisprudence from a narrow protectionist stance that prioritized the sanctity of trademarks to a more balanced approach that acknowledges competition as a legitimate driver of consumer choice, still, the judicial framework around parody has developed only incidentally, often without doctrinal clarity, leaving advertisers uncertain about the permissible limits of humour in comparative claims.

Internationally, parody has gained greater recognition. U.S jurisprudence protects parody under fair use if it avoids confusion. The American approach is rooted not only in statutory interpretation but also in constitutional protection under the first amendment, which values parody as a form of critical or humorous speech contributing to democratic discourse. EU law recognizes parody explicitly as a copyright exception and tolerates comparative advertising under directive. The EU model, while more restrictive in some respects, provides statutory certainty, ensuring that advertisers know the boundaries within which parody may be employed. In both systems, the law has evolved to accommodate parody as a distinct category, rather than leaving it to judicial improvisation.

In India, however, parody still occupies an ambiguous space between lawful comparative advertising and trademark infringement.

Statutory Framework in India

The Trade Marks Act, 1999 is the principal legislation governing trademarks in India.

Section 29 of the Trade Marks Act, 1999³ prohibits unauthorized use of registered trademarks if likely to cause confusion or dilute distinctiveness.

Section 30(1) creates exceptions, permitting use of another's marks in comparative advertising if it accords with honest practices, does not cause unfair advantage, and does not harm the trademarks reputation.

The constitutional dimension is significant. Article 19(1)(a) of the Indian constitution⁴ guarantees freedom of speech and expression, which extends to commercial speech. However, article 19(2)⁵ allows restrictions for protecting reputation and intellectual property. Thus, comparative advertising with parody requires balancing commercial free speech and trademark rights.

Notably, the act does not explicitly recognize parody as a defence, unlike U.S. fair use or EU parody provision. The result is a doctrinal gap where parody is neither expressly permitted nor clearly prohibited. The Advertising Standards Council of India (ASCI) guidelines further restrict misleading or disparaging ads, but these too do not define parody.

Judicial Approach in India

The Indian judiciary has played a central role in shaping the boundaries of comparative advertising and parody. However, courts have addressed these concepts separately, without developing an integrated framework. This section examine two pivotal case, one on comparative advertising that is PepsiCo v Hindustan Coca Cola, and on parody in advertising in Royal Challengers v Uber. Together, they illustrate the fragmented state of Indian law and the doctrinal gap at its core.

PepsiCo Inc. v Hindustan Coca Cola Ltd. (2003)⁶

This case is often cited as the foundation of Indian jurisprudence on comparative advertising.

³ Trade Marks act 1999, § 29, No. 47, Acts of parliament 1999

⁴ INDIA CONST. art. 19. cl. 1

⁵ INDIA CONST. art. 19. cl. 2

⁶ Pepsi Co., Inc. v. Hindustan Coca Cola Ltd., 2003 SCC OnLine Del 802

PepsiCo challenged a Coca Cola commercial in which children mocked a cola drink resembling Pepsi, rejecting it in favour of Coca Cola. Pepsi argued that the ad disparaged its brand and diluted its goodwill.

The Delhi high court held that comparative advertising is not per se unlawful. A trader may lawfully declare that its goods are superior to a rivals, provided the advertisement does not cross the line into disparagement. The court distinguished between “puffery” (exaggeration in favour of one’s own product) and unfair disparagement of another’s. Importantly, the court emphasized that even indirect ridicule by implication may amount to disparagement.

This judgment reflects a conservative approach, prioritizing the protection of brand reputation and consumer trust. While it clarified that comparative advertising is permitted under section 30(1) of the trade marks act, it left no room for humour or parody within such advertising.

Royal Challengers Sports (P) Ltd. v Uber India Systems (2025)⁷

This more recent case addressed parody in advertising head-on, Uber launched an IPL campaign with the slogan “Royally Challenged Bengaluru,” parodying the Royal Challengers Bengaluru cricket team. The franchise alleged trademark infringement and dilution, arguing that Uber unfairly exploited its reputation.

The Delhi high court, however, adopted a liberal stance, it devised the intent manner message test, asking:

- What was the advertiser’s intent?
- In what manner was the parody executed?
- What message did it convey to consumers?

Applying this framework, the court found Uber’s parody to be humorous, contextual, and not misleading. It ruled that parody could form part of legitimate commercial expression, so long as it did not cause consumer confusion or maliciously tarnish the mark.

This judgment represents a doctrinal shift. For the first time, an Indian court explicitly recognised parody in advertising as permissible, subject to structured evaluation.

Taken together, these two cases highlight the fragmented nature of Indian law. PepsiCo firmly addresses comparative advertising but excludes parody, while Royal Challengers introduce a test for parody but does not integrate it into the comparative advertising framework. No Indian case yet addressed both simultaneously.

This absence underscores the research problem, Indian law does not provide a unified doctrinal

⁷ Royal Challengers Sports (P) Ltd. v. Uber India Systems (P) Ltd., 2025 SCC OnLine Del 2860

standard for advertising that combine comparison with parody a frequent phenomenon in digital and viral marketing. The result is unpredictability for business, trademark owners, and consumers alike.

Comparative Legal Perspectives

United States

The U.S. has developed robust jurisprudence on both comparative advertising and parody. Under the Lanham Act, comparative advertising is permitted if truthful and non-misleading. The federal trade commission actively encourages it as pro-competitive.

Parody is also protected through the fair use doctrine in copyright law and under the first amendment. In *Campbell v Acuff-Ross music* (1994),⁸ the U.S. Supreme Court held that parody is transformative expression and may qualify as fair use, even in a commercial context. Under trademark law, courts often protect parody if it avoids consumer confusion.

This dual recognition ensures that both comparative claims and parody are accommodated, subject to safeguards against deception.

European Union

The EU regulates comparative advertising through directive, which will allows it if the comparison is objective, not misleading, and does not denigrate or discredit a competitor. The EU is stricter than the U.S. in protecting brand reputation Parody however, has statutory recognition under the InfoSec directive, which exempts parody, caricature, and pastiche from infringement. In, the court of justice of European Union clarified that parody is an autonomous concept of EU law, requiring humour or mockery, without necessarily avoiding offense.

Thus, the EU creates clear statutory space for parody, even if its approach to comparative advertising is more cautious.

Lessons for India

Both the U.S and EU provide greater clarity than India. The U.S. emphasizes free speech and transformative value, while the EU emphasizes statutory exceptions. India's failure to recognize parody explicitly has left courts improvising. The lesson is that statutory reform combined with judicial doctrine can provide predictability and balance.

⁸ *Campbell aka Skywalker, et al v. Acuff-Rose Music, Inc.*, 1994 SCC OnLine US SC 22

Theoretical and Doctrinal Analysis

Fair Use and Honest Use Theory

The principal of “honest use” under section 30(1) of the trade marks act, 1999⁹ represents India’s statutory accommodation of comparative advertising. The provision essentially mirrors the global concept of fair use or fair dealing. Balancing trademarks rights against the interest of free competition. It allows traders to use another’s trademark in advertising if such use is honest, not misleading and not likely to cause unfair harm to the competitor’s reputation.

Parody, when it involved exaggeration or humour without creating consumer confusion, appears to fall naturally within this principle. For instance, if an advertisers parodies a competitor’s slogan to draw attention to its own product, without suggesting equivalence or disparagement, the use can arguable be classified as “honest”. However, the absence of statutory recognition for parody creates uncertainty: one court may view it as legitimate fair completion, while another may categorize it as disparagement or dilution.

The doctrinal challenge is that section 30(1) does not explicitly list parody among “honest practices”. Consequently, Indian courts diverge in interpretation, oscillating between strict readings (favouring brand owners) and liberal ones (acknowledging humour and creativity).¹⁰

A clearer incorporation of parody into the fair use/honest use framework would harmonize judicial outcomes.

Commercial Free Speech Theory

The constitutional dimension adds complexity. Article 19(1)(a) guarantees freedom of speech and expression, which the Supreme Court of India has interpreted to include commercial speech such as advertisements because they provide information relevant to consumer choice. Parody, as humorous or satirical commentary, is a form of expression and thus within this constitutional guarantee.

However, article 19(2) permits reasonable restrictions, including those necessary for protecting the reputation of others and safeguarding intellectual property. This creates a direct constitutional tension does a parody advertising that pokes fun at a rival brand constitute protected expression or does it cross into unlawful injury of reputation?

The Indian judiciary has not developed a systematic test for resolving this conflict in commercial contexts. While *Tata v Greenpeace*¹¹ leaned towards protecting parody in socio-

⁹ Trade Marks act 1999, § 30, cl.1, No. 47, Acts of parliament 1999

¹⁰ McCarthy, J. Thomas, *McCarthy on Trademarks and Unfair Competition* (5th ed. 2021).

¹¹ *Tata Sons Limited v. Greenpeace International*, 2011 SCC OnLine Del 466

political setting, cases like PepsiCo and Hamdard leaned towards restricting commercial disparagement. This suggests that Indian courts are more cautious when parody is deployed as a market strategy rather than as social commentary.

Therefore, doctrinal development is required to ensure that article 19(1)(a) extends to commercial parody in advertising, subject to the safeguards of article 19(2). This would position parody not as a threat to trademarks but as a legitimate part of competitive free speech.

Market Regulation Theory

Trademarks laws is not merely a private right it also serves as a mechanism of market regulation. Its central goals are to prevent consumer confusion, protect goodwill, and maintain the integrity of market signals. The question is whether parody undermines or enhances these objectives.

Excessive parody: if advertisers are allowed to parody freely, trademarks may lose distinctiveness, and consumers may be misled into believing the parody indicates endorsement. This undermines the informational function of trademarks.

Excessive protection: on the other hand, if parody is categorically prohibited, competition is stifled, consumers lose access to critical, often humorous, insights about the shortcomings of rival products. Brands gain undue control over cultural and commercial discourse¹².

Market regulation theory therefore demands a calibrated approach. It recognizes parody as double edged sword capable of fostering market dynamism, but equally capable of undermining brand equity if unchecked. The challenge for Indian law is to draw a middle path tolerating parody where it informs and entertains, but restricting it where it confuses or maliciously disparages.

Proposed Intent Manner Message Test

The intent manner message test, introduced in royal challenger's v Uber (2025), offers a promising doctrinal framework to operationalize this balance.

Intent – the advertiser's underlying purpose must be scrutinized. Was the parody intended to humorously differentiate one's product, or was it designed to maliciously disparage a competitor? A humorous intent aligns with honest use, while a malicious intent may signal bad faith.

Manner – the way in which the parody is executed is critical. A parody presented in a clear,

¹² Raghavan, S., *Intellectual Property and Advertising Law in India* (Oxford University Press, 2020).

humorous style, without suggesting equivalence or origin, minimise the risk of consumer confusion. Conversely, if the parody is designed in a manner that blurs brand identities or uses misleading visual cues, it becomes problematic.

Message – the overall impression conveyed to consumers must be considered. Does the parody inform, critique, or entertain in a way that consumers can recognise as humour? Or does it tarnish the competitor’s reputation by creating an impression of inferiority or poor quality?

Adopting this three step test consistently would enable Indian courts to evaluate parody within comparative advertising more predictably. It harmonizes the fair use/honest use principle with constitutional free speech guarantees and marked regulation concerns. It also provides clarity to advertisers and trademark owners about the limits of permissible humour in competitive contexts. In short the intent manner message test can serve as the doctrinal bridge India need to integrate parody into comparative advertising law, ensuring that the “blurred line” becomes more defined.

Findings and Discussion

This research identifies key findings:

1. Statutory gap – section 30(1) recognizes comparative advertising but omits parody
2. Judicial inconsistency – PepsiCo (restrictive) vs. Royal Challengers (liberal) show lack of uniformity.
3. Comparative insights – U.S and EU models show parody can be lawfully accommodated.
4. Constitutional tension – a structured test is essential for clarity.

Discussion: without clear doctrine, advertisers operate under uncertainty, trademark owner’s face inconsistent. Enforcement, and consumers risk confusion. The law must evolve to reflect contemporary advertising practices, including parody within comparative claims.

Proposed Solutions

Building a coherent Indian legal framework for comparative advertising and parody requires judicial elaboration as well as legislative intervention. The first would be judicial standardization. The courts in India would have to recognize intent manner message test consistently, rather than improvising in each case. This would bring in uniformity so the advertiser understands the boundaries of lawful parody and the trademark owners can better forecast the manner in which the courts would respond to the claim of infringement. Such

standardization would reduce uncertainty and build confidence on the judicial outcome.

The second option is statutory reforms. Section 30 of the Trade Marks Act, 1999¹³ should undergo amendment to specifically regard parody as a qualified defence to comparative advertising. Just like the U.S doctrine of fair use or the EU parody exception under statute, the Indian statute should acknowledge parody as legitimate in bona fide instances where such use neither causes consumer confusion nor malicious disparagement. This will remove the silence in current doctrine and afford a clear legislative guidelines for courts.

Third, self-regulation needs to be more robust. The ASCI should formulate rules enumerating clearly under what circumstances parody n advertising is allowed. For instance, such rules may state that parody is allowed when it is funny and easily grasped as satire but not when it confuses consumers or unfairly disparages a competitor's brand. Rules specific to parody added in the codes shall add clarity on the industry level along with the statutory reforms.

Fourth, there is a pressing need for constitutional balancing. There should be an explicit reconciliation in courts between article 19(1)(a)¹⁴, which ensures the freedom of expression, and article 19(2)¹⁵, which permits restriction on it n the interests of protecting reputation and intellectual property. Recognizing parody as commercial free speech with reasonable restrictions would certainly maximize India's constitutional jurisprudence while protecting consumer interest and brand integrity.

Finally India must seek global alignment by drawing from international best practices. The U.S approach emphasizes flexibility and transformative value; it views parody as a free speech and fair use matter. The EUs method, in contrast, leans towards clarity in the statute, listing parody explicitly as an exception in intellectual property laws. Indeed, India might find value in a hybrid approach emphasizing free expression like the U.S and legislative clarity like the EU to develop parody law appropriate to its socio economic and cultural context.

Also consumer education initiatives might also do well to be pursued. Since a parody's humour often depends on the recognition by the audience, public awareness initiatives could increase

¹³ Trade Marks act 1999, § 30, No. 47, Acts of parliament 1999

¹⁴ INDIA CONST. art. 19. cl. 1.

¹⁵ INDIA CONST. art. 19. cl. 2.

consumer consciousness about the difference between parody and misleading claims. In so doing, the law and consumer perception may align to ensure that parody is considered a piece of creativity and not a form of deceit.

CONCLUSION

This paper aimed to clarify and highlight the doctrinal ambiguities around matters of comparative advertising and intellectual property parody under Indian law. At bottom is a conundrum spawned by the lack of explicit recognition of parody within the Trade Marks Act of 1999. The jurisprudence, in contrast to comparative advertising accommodated under Section 30(1) with regard to "honest practices," leaves the matter of parody in uncertainty, posing a dilemma to the courts with respect to its status. The upshot is a most fragmented jurisprudence, wherein some rulings emphasize the protection of brand reputation and consumer clarity, whereas others endorse parody as a valid expression of commercial creativity.

The study revealed that this ambiguity has significant implication. For advertisers, the lack of clarity generates risk in deploying parody as a competitive strategy. For trademark owners, it creates uncertainty in protecting their marks from ridicule or dilution. For consumers, inconsistency in judicial outcomes undermines their ability to distinguish between lawful humour and misleading claims. The problem is compounded by the constitutional tension between article 19(1)(a), which protects free speech including commercial expression, and article 19(2), which permits restrictions to safeguard reputation and intellectual property.

The comparative analysis offered valuable insights. In the United States, parody is protected both under the fair use doctrine and the first amendment, with courts recognizing its transformative value. In the European Union, parody has statutory recognition under copyright law, and comparative advertising is carefully regulated by directives to ensure fair competition. These models show that doctrinal clarity and statutory guidance are possible without undermining either consumer welfare or intellectual property rights. India, however, lags behind in providing such clarity.

The findings of this study demonstrate that Indian law urgently requires reform. Judicial adoption of the intent manner message test would provide consistency by evaluation parody on the basis of purpose, execution, and consumer impression. Legislative amendment of section

30 to expressly recognize parody as a qualified defence would remove ambiguity and give courts a statutory anchor. Industry level guidance from advertising standards council of India could supplement these reforms by clarifying best practices. Most importantly, courts must explicitly harmonize parody within the framework of constitutional free speech, recognizing it as a form of commercial expression subject to reasonable restrictions.

Answering the research question, it is clear that Indian law presently does not provide a stable framework for parody in comparative advertising. Reform is necessary to strike a balance between brand protection and creative freedom. By adopting statutory amendments, judicial consistency, and regulatory guidelines, India can move toward a system that not only safeguards trademarks integrity but also fosters innovation, humour, and consumer engagement.

The significance of these reforms extends beyond intellectual property law. In embracing parody as a legitimate commercial strategy, India would affirm its commitment to a marketplace of ideas that values both economic competition and expressive freedom. At the same time, by calibrating safeguards against malicious disparagement, the law would preserve the integrity of trademarks as valuable commercial assets. The future of advertising in India lies in this balance one that protects the sanctity of trademarks while celebrating humour and creativity as vital elements of consumer culture.

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