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Comparative Advertising under Indian Legal System: Opportunities and Challenges

COMPARATIVE ADVERTISING UNDER INDIAN LEGAL SYSTEM: OPPORTUNITIES AND CHALLENGES

by
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Introduction

"Comparative advertisement" has brought vast opportunities and at the same time, tremendous challenges before the present day open economy. It is nothing but a keen sense of competition and the desire to capture markets which has resulted into comparative advertising. Broadly speaking a comparative advertising can be understood as an advertising of a product or service, by comparing or drawing an analogy with similar products or services of the competitors. Mostly, the products or services are advertised comparing it with other products or services and depicting itself to possess the characteristics which "others lack". Sometimes, also boasting their product, and claiming how they are "superior" or "best". An advertiser may use packaging, shape or a style distinctive to a particular brand, while in the same literature, give it an "ordinary" label. It basically involves an honest and true comparison of the factors of one trader's products and services with those of another, so as to make an impact upon the minds of the consumers.

There is a thin dividing line between comparative advertising rights and wrongs. Thus, one should be wary in his approach towards the same. If, on the one hand, comparative advertising can rightfully be used as an important business strategy for the successful promotion of the products and services of a trader. On the other hand, if proper precaution is not taken, it may inescapably result into various wrongs, to name a few, commercial disparagement, trade marks infringement, passing off, and unfair trade practices, etc.

Unlike the UK, USA or China, India does not have in place a specific statute regulating the area of comparative advertising. Recently enforced, the Competition Act, 2002 also does not explicitly make a mention of comparative advertising. In the scarcity of a specific legislation on the subject, the law relating to comparative advertising in India seems to be scattered. Inevitably, the law on commercial torts, free speech, trade marks, unfair

competition and the guidelines laid in several leading judgments govern the present regime of comparative advertising litigation in India.

Comparative Advertising as "Commercial Speech"

An advertisement which tends to enlighten the consumer either by exposing the falsity or misleading nature of the claim made by the trade rival or by presenting a comparison of the merits (or demerits) of their respective products, is for the public good and hence cannot be taken to be an actionable wrong, unless it is motivated by malice and is also false. This is on account of the fact that a competitor is better equipped to make such an exposure than anyone else and hence the benefit that

would flow to the society at large on account of such exposure would always outweigh the loss of business for the person affected.

If two trade rivals indulge in puffery without hitting each other, the consumer is misled by both, unless there is increased awareness or governmental intervention. On the other hand, if both are restrained from either making false representations/incorrect representations/misleading representations or issuing unintended warranties (as defined as unfair trade practice under the Consumer Protection Act), then the consumer stands to gain. Similarly, permitting two trade rivals to expose each other in a truthful manner, will also result in consumer education.

Supreme Court of India, way back in year 1995, in *Tata Press Ltd.* v. *Mahanagar Telephone Nigam Ltd.*[1], recognised "commercial speech" to be included within the expression of "freedom of speech and expression"[2]. It was observed that:

> "*23.* ....the public at large has a right to receive the "commercial speech". Article (19)(1)(*a*) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfilment has to be guided by the information disseminated through the advertisements. The protection of Article 19 (1)(*a*) is available to the speaker as well as to the recipient of the speech. The recipient of "commercial speech" may be having much deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a life saving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration."[3]

It was further observed that "Commercial speech" cannot be denied the protection of Article 19 (1)(*a*) of the Constitution merely because the same is issued by businessmen. The Supreme Court was categorical in stating, "Advertising which is no more than a commercial transaction is, nonetheless, dissemination of information regarding the product advertised. Public at large is benefited by the information made available through the advertisement."[4] It was also observed that "in a democratic economy free flow of commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without there being freedom of "commercial speech".[5]

Once it is accepted that free commercial speech is a fundamental right guaranteed under Article 19(1)(*a*), then the curtailment of the same can only be by law that would fall under Article 19(2) imposing a reasonable restriction on such a right, in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Comparative Advertising under Trade Marks Law *vis-à-vis* Commercial Disparagement

As per Section 29(1) of the Trade Marks Act, 1999, "A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or

deceptively similar to the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark". The expression "in relation to any goods in respect of which the trade mark is registered" in Section 29(1) makes it clear that there is no infringement of a mark unless the infringer uses the mark in relation to same goods covered by the registration. Therefore, sometimes, the defendant may take the following defences:

(*a*) that the defendant has not used plaintiff's trade mark and device on their products in the course of their trade nor in relation to any goods in respect of which the trade mark is registered;

(*b*) that the defendant has not sold their merchandise goods under the

trade mark of the plaintiff;

(*c*) that the defendant has not advertised their products under the plaintiff's trade mark; and

(*d*) it is not disputed that comparative advertisements are permissible in law.

But it is fundamental principle of trade mark law that the function of a trade mark is to indicate the origin of the goods to which it is applied. The expression "in the course of trade" has a definite connotation. In order to constitute infringement, the use complained of must be a use in the course of trade. The defendants must be dealing or selling of in some other way trading in the goods bearing the offending mark. Possession of such goods for the purpose of comparison will not amount to infringement. The right conferred by registration is a right to use the mark in the course of trade and obviously this right is infringed only when the infringer also uses the mark in the course of trade. The use "in the course of trade" means in the course of business. It did not mean use as a trade mark. The purpose for which the mark was applied will not prevent it constituting an infringement provided it was used in the course of trade and was capable of indicating a connection in the course of trade between the goods and the proprietor of the registered trade mark.

Section 30(1) of the Trade Marks Act, 1999 in effect permits comparative advertising, stating that "Nothing in Section 29 shall be preventing the use of registered trade mark by any person with the purposes of identifying goods or services as those of the proprietor provided the use: (*a*) is in accordance with the honest practices in industrial or commercial matters; and (*b*) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark". Further, Section 29(8) of the said Act, discussing what form of advertising would amount to infringement, reads "A registered trade mark is infringed by any advertising of that trade mark if such advertising: (*a*) takes unfair advantage and is contrary to honest practices in industrial or commercial matters; or (*b*) is detrimental to its distinctive character; or (*c*) is against the reputation of the trade mark". In effect, the provisions read together allow comparative advertising as long as the use of the registered trade mark does not amount to infringement. If an advertiser makes a consumer aware of the truth, there is nothing wrong with it. The reason for this is that a party cannot be held liable for libel when all that has been stated is the truth, which is a complete defence against any assault or challenge regardless of whether any damage is sustained as a result of it.

Recently, in *Paras Pharmaceuticals Ltd.* v. *Ranbaxy*

Laboratories Ltd.[6], the High Court of Gujarat was faced with a comparative advertising case in which the counsel for the appellant successfully contended that the respondents have used the mark without any license or permission from the appellant, therefore, as per the provisions of Section 29 of the Trade Marks Act, 1999 the respondents are liable for infringement. It was held in this case that, "since the appellant's product is much popular amongst the general public as a pain reliever, the respondent has tried to take unfair advantage which may amount to an infringement of the Trade Mark within the meaning of Section 29(8)(*a*) of the Act. By taking shelter of a non-existent product violet coloured pack, if the respondent tries to establish that its product is true pain reliever than the other product, it would certainly affect the reputation of the trade mark of the appellant and to this extent, clause (*c*) of Section 29(8) of the Act can also be invoked for the purpose of satisfying the Court that the respondent has infringed the trade mark of the appellant."[7]

The trade marks law also finds applicability to well known unregistered marks where action of passing off can be resorted to At this juncture the difference in approach in a passing off action and one for disparagement must also be understood. In a case of passing off, the question invariably is whether the trade mark or trade dress employed by A for his product is so deceptively similar to the established mark or trade dress of B's product that A's product could be confused by or passed off to consumers as B's product? Here the comparison is of rival products having a similar trade mark, get-up or trade dress. Familiarity with the established mark, trade dress or get-up is presumed. Because of this familiarity the person intending to pass off his goods as those of the famous or more popular, exploits. In the case of disparagement, the one who disparages another's product does not seek to make his product similar to the disparaged product, but to distinguish it from the disparaged product. The object of disparagement is to make the disparaged product appear to be as near or similar to the competitor's product. The comparisons, therefore, in cases of passing off and in cases of disparagement are different. Consequently, the comparison must be from the perspective of an average person with imperfect recollection but, that person must be picked from the category of users of the product allegedly sought to be disparaged or slandered.

It is otherwise where a trader does not limit himself to a comparison of his goods with those manufactured by another trader and a mere statement that they are inferior in quality to his own, but goes further and makes an

untrue statement of fact about his rival's goods, for example, where he states that they are rotten or unmerchantable. In a case like this, an action on the case will lie, provided it can be proved that such statement was published maliciously and that special damage has ensued.[8] It is not malice if the object of the trader is to push his own business. To make the act malicious it must be done with the direct object of injuring the other person's business. Therefore, the mere fact that it would injure that other person's business is no evidence of malice.[9]

Walton J in *De Beers Abrasive Products Ltd.* v. *International General Electric Co. of New York Ltd.*[10] has summarized the law point as, "what precisely is the law on this point? It is a blinding glimpse of the obvious to say that there must be a dividing line

between statements that are actionable and those which are not; and the sole question upon a dry point of law such as we are discussing here is: where does that line lie? On the one hand, it appears to me that the law is that any trader is entitled to puff his own goods, even though such puff must, as a matter of pure logic, involve the denigration of his rival's goods. Thus in the well-known case of the three adjoining tailors who, put notices in their respective windows reading: "The best tailor in the world", "The best tailor in this town", and "The best tailor in this street", none of the three committed an actionable wrong."[11]

Where, however, the situation is not that the trader is puffing his own goods, but turns to denigrate those of his rival, and then the situation is not so clear cut. Obviously the statement: "My goods are better than X's" is only a more dramatic presentation of what is implicit in the statement: "My goods are the best in the world". Accordingly, such a statement would not be actionable. At the other end of the scale, if what is said is: "My goods are better than X's", because X's are absolute rubbish", then it is established by dicta of Lord Shand in the House of Lords in *White* v. *Mellin*[12], which were accepted by Walton J as stating the law, this statement would be actionable.

The New *International Websters' comprehensive dictionary* defines disparage/disparagement to mean, "to speak of slightingly, undervalue, to bring discredit or dishonour upon, the act of deprecating, derogation, a condition of low estimation or valuation, a reproach, disgrace, an unjust classing or

comparison with that which is of less worth, and degradiation. The *Concise Oxford Dictionary* defines disparage as under, to bring discredit on, slightingly of and depreciate. McCarthy on *Trade Marks and Unfair Competition* (Fourth Edition, Volume 4 at 27:38) explains "Puffing" to be exaggerated advertising, blustering, and boasting upon which no reasonable buyer would rely and is not actionable.

Finally, it is clear that between clear-cut cases of permissible comparative advertising and impermissible "rubbishing" of a rival's product there may yet be a wide field of cases and the dividing line in such cases would have to drawn based on the test whether a reasonable man would take the claim of the alleged slanderer seriously or take it with the proverbial "large pinch of salt" and dismiss it as mere puffery. If it is the former then, it is a case of disparagement and if it is the latter then, it is a case of mere puffery which is not actionable.

Comparative Advertising and Unfair Trade Practices

The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) vide Section 36-A(1)(*x*) provides for "disparagement of goods of another person" as an unfair trade practice. The said Section 36-A provides that "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provisions of any services, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely, (1) the practice of making any statement, whether orally or in writing or by visible representation which, (*x*) gives false or misleading facts disparaging the goods, services or trade of another person.

The definition of "unfair trade practice" found in Section 36-A(1) of the MRTP Act, 1969, is adopted in pari materia in Section 2(1)(*r*) of the Consumer Protection Act, 1986. But once Section 66 of the competition act, 2002 is notified and the MRTP Commission is dissolved, a manufacturer or a stockist or a dealer, cannot invoke the provisions of the MRTP Act. But he may be able to approach the competition

commission. However, he cannot invoke the provisions of the Consumer Protection Act, since that Act is intended only for the benefit of consumers and not for the benefit of manufacturers, marketers or service providers.

Answering the question regarding the bar on jurisdiction of the ordinary civil court the Delhi High Court in *Reckitt Benckiser (India) Limited* v. *Hindustan Lever Ltd.*[13], has made it clear that:

> "in any event, a complaint under that the Consumer Protection Act, 1986 can only be qua a "consumer dispute" and that, too, by a consumer or a consumer association or the Government. It does not contemplate a complaint by a competitor. Furthermore, Section 3 of the Act also makes it clear that it shall not be in derogation of but in addition to the provisions of any other law for the time being in force. Thus, the Consumer Protection Act, 1986 does not stand in the way of the plaintiff from seeking remedies by way of this suit. Further, answering the similar question in reference to the MRTP Act, it was observed that the MRTP Act does not set-up any bar, either express or implied, to the institution of the present suit. The provisions of Section 9 of the Civil Procedure Code are clear. The plaintiff's right to seek the common law remedy in the civil courts has not been taken away by the enactment of the MRTP Act. The provisions of Section 4 as well as Section 12-B of the MRTP Act put the case beyond any doubt that the MRTP Act does not in any way bar the institution of a suit as the present one." [14]

Indian Judicial Pronouncements on Comparative Advertising

The vast majority of the viewer of the commercial advertisement on electronic media are influenced by the visual advertisements as these have a far reaching influence on the psyche of the people, therefore, discrediting the product of a competitor through commercial would amount to disparagement as has been held by the judiciary in India and abroad.

In *Reckitt and Colman of India Ltd.* v. *M.P. Ramachandran*[15] a learned Single Judge of the High Court of Calcutta had considered the concept of negative campaigning. The learned Judge after considering several English decisions including *White* v. *Mellin*[16]; *Hubbuck & Sons Ltd.* v. *Wilkinson, Heywood & Clark Ltd.*[17]; and *De Beers Abrasive Products Ltd.* v. *International General Electric Co.*[18] observed as under[19]:

(*i*) A tradesman is entitled to declare his goods to be the best in the world, even though the declaration is untrue.

(*ii*) He can also say that his goods are better than his competitor's, even though such a statement is untrue.

(*iii*) For the purpose of saying that his goods are the best in the world or his goods are better than his competitor's he can even compare the advantages of his goods over the goods of others.

(*iv*) He, however, cannot while saying his goods are better than his competitors', say that his competitors' goods are bad.

(*v*) If there is no defamation to the goods or to the manufacturer of such goods no action lies, but if there is defamation, an action lies.

What is really relevant in context of such kind of advertising are conclusions (*iv*) and (*v*) mentioned above, which effectively mean that an advertiser can say that his goods are better than his competitors but he cannot say that his competitor's goods are bad because that would amount to slandering or defaming the competitor and its goods, which is not permissible. But if there is no derogatory reference at all to the goods or to the manufacturer, no action lies against that advertiser.

The above decision of the Calcutta High Court was followed by a learned Single Judge of the Delhi High Court in *Reckitt and Colman of India Ltd.* v. *Kiwi TTK Ltd.*[20]. It was held that "the general principle is that the courts will injunct an advertiser from publishing or circulating an article if the dominant purpose is to injure the reputation of the plaintiff"[21]. An advertiser is not entitled to say that his competitor's goods are bad so as to promote his goods. If an action lies for defamation, an injunction may be granted. It was further held that though a comparative advertisement is permissible, the same shall not, in any manner, be intended to disparage or defame the product of the competitor.[22]

In an interesting case of *Dabur India Ltd.* v. *Wipro Ltd.*[23], the defendant Wipro Limited was airing a TV commercial in respect of its product "Wipro Sanjivani Honey" with a view to belittle the plaintiff's product 'Dabur Honey'. In the impugned advertisement it was shown that one Mrs Paradkar was shown holding a bottle of honey, which was as alleged, in fact the plaintiff's bottle (without the label) and the voice over was to the effect that the bottle was purchased two years ago but it has remained the same (jaisi ki waisi). In comparison one Mrs Rao purchased Wipro Sanjivani Honey, which got consumed almost immediately. Honorable Delhi High Court held that "facts of the case suggested that the intent of the commercial was to suggest that the product of the defendant was far superior to that of the

plaintiff. It was permissible for an advertiser to proclaim that its product was the best which automatically implied that all other similar products were inferior. In comparative advertising, a consumer may look at a commercial from a particular point of view and come to a conclusion that one product is superior to the other, while another consumer may look at the same commercial from another point of view and come to a conclusion that one product is inferior to the other".[24] It further added that "the degree of disparagement must be such that it would tantamount to defamation. In the present case, the overall audio-visual impact did not leave an impression that the message that was sought to be conveyed by it was that Dabur Honey was being denigrated, but rather that Wipro Sanjivani Honey was better."[25] Having found no element in the commercial which could be disapproved, the application for injunction was dismissed.

Interestingly, the court suggested that a manufacturer of a product ought not to be hyper-sensitive in such matters. It is necessary to remember that market forces are far stronger than the best advertisements. If a product is good and can stand up to be counted, adverse advertising may temporarily damage its market acceptability, but certainly not in the long run.[26]

Again in *Dabur India Ltd.* v. *Emami Ltd.*[27], where again an advertisement was attacked, the offending voice over of the advertisement was "forget Chyawanprash in summers, eat Amritprash instead" (*Garmion mein Chyawanprash bhool jao, Himani*

Sona Chandi Amritprash khao). It was held that the aforesaid effort on the part of the defendant would be definitely a disparagement of the product Chayawanprash. It was clarified that "even if there be no direct reference to the produce of the plaintiff and only a reference is made to the entire class of Chayawanprash in its generic sense, even in those circumstances disparagement is possible. For Dabur Chayawanprash is also a Chayawanprash as against which disparagement is made."[28]

The above decision can be further supported by Delhi High Court decision in *Dabur India Ltd.* v. *Colgate Palmolive India Ltd.*[29], where learned single Judge took the view that the generic disparagement of a rival product without specifically identifying or pin pointing the rival product is equally objectionable. Clever advertising can indeed hit a rival product without

specifically referring to it. No one can disparage a class or genre of a product within which a complaining plaintiff falls and raise a defense that the plaintiff has not been specifically identified.

In the above case, the advertisement showed a cine star stopping purchasers of Lal Dant Manjan powder and informing them of its ill effects by rubbing it on a pair of spectacles. The rubbing process left marks on the spectacles, which were termed as akin to sandpapering. The cine star was heard telling the purchaser that "it is easy to change spectacles but not the teeth". The Delhi High Court found a fit case of commercial disparagement and injunction was granted. The learned Single Judge reiterated the principle that, while praising its product, an advertiser cannot describe the competitor's product as inferior, thereby damaging its reputation.

In *Karamchand Appliances (P) Ltd.* v. *Shri Adhikari Bros.*[30], the Delhi High Court was concerned with mosquito repellents ALL OUT and GOOD NIGHT. The offending advertisement showed a lady removing the ALL OUT pluggy and replacing it with GOOD NIGHT with a background voice claiming that the latter's turbo vapour chases the mosquitoes at double the speed. While granting an injunction, the Delhi High Court held in Paragraph 19 as—"two propositions clearly emerge from the above pronouncements, namely, (1) that a manufacturer or a tradesman is entitled to boast that his goods are the best in the world, even if such a claim is factually incorrect, and (2) that while a claim that the goods of a manufacturer or the tradesman are the best may not provide a cause of action to any other trader or manufacturer of similar goods, the moment the rival manufacturer or trader disparages or defames the goods of another manufacturer or trader, the aggrieved trader would be entitled to seek reliefs including redress by way of a prohibitory injunction."[31]

Again, in *Godrej Sara Lee Ltd.* v. *Reckitt Benckiser (I) Ltd.*[32], the Delhi High Court was concerned with an advertisement in which an insecticide by name MORTEIN was shown to be more effective in destroying cockroaches and mosquitoes than the plaintiff's product HIT, which had two versions, one for mosquitoes and one for cockroaches. A.K. Sikri, J., of the Delhi High Court analysed in detail, the entire case law on the subject. However, he refused injunction on the ground that the plaintiff was guilty of concealment of material facts and also on the ground that the advertisement just highlighted the product of the defendant as better than that of the competitor.

In another famous case,[33] Pepsi filed suit against Hindustan Coca Cola. The impugned commercial showed that the lead actor asks a kid as to which is his favourite drink? The Kid utters the word "Pepsi", which can be seen from his lip movement though the same is muted. The lead actor thereafter asks the boy to taste two drinks in two different bottles covered with lid and asks the question *"Bacchon Ko Konsi pasand aayegi?"* After taste the boy points out to one drink and says that that drink would be liked by the children because it is sweet. In his words he says. *"Who meethi hain, Bacchon ko meethi cheese pasand hai."* He preferred the other drink which according to him tastes strong and that grown up people would prefer the same. And later the stronger one came out be "Thums Up", and one which is sweet, word "Pappi" is written on the bottle with a globe device and the colour that of the "Pepsi". It was further brought to the notice of the court that there are other commercials by the respondents where the lead actor said "Wrong choice baby", and that the "Thums Up" is a right choice, and "Kyo Dil Maange No More" for the appellant's products. It was categorically held that by calling the Cola drink of the appellants "*Yeh Bachhon Wali Hai, Bachhon Ko Yeh Pasand Aayegi"* and "*Wrong Choice Baby"*, the respondents depicted the commercial in a derogatory and mocking manner. It can't be called puffing up. It was further observed that repeatedly telecasting this commercial will leave an impression on the mind of the viewers that product of the appellant i.e. "Pepsi" is simply a sweet thing nor meant for grown up or growing children. If they choose "Pepsi", it would be a wrong choice. The message is that kids who want to grow should not drink "Pepsi". They should grow up with "Thums UP". Accordingly the court found disparagement of the appellant's product. It was held that in deciding the question of disparagement, the following factors have to be kept in mind: (*i*) intent of the commercial; (*ii*) manner of the commercial; and (*iii*) story line of the commercial and the message sought to be conveyed by the commercial. If the manner is ridiculing or the condemning product of the competitor then it amounts to disparaging but if the manner is only to show one's product better or best without derogating other's product then that is not actionable.[34]

Conclusion

In a free market economy, the products will find their place, as water finds its level, provided the consumers are well informed. Consumer education, in a country with limited resources and a low literacy level, is possible only

by allowing a free play for the trade rivals in the advertising arena, so that each exposes the other and the consumer thereby derives a fringe benefit. Therefore, it is only on the touchstone of public interest that such advertisements are to be tested. This is why the Supreme Court held in *Tata Press case* that "Public at large is benefited by the information made available through the advertisement". As a matter of fact the very basis of the law relating to trade marks is also the protection of public interest only, since the courts think of an unwary purchaser, who may buy a spurious product on the mistaken impression that it was brand "x". The same logic should form the basis for an action in respect of disparaging advertisements also.

Effective advertising delivers a message that is remembered. It can change the way the world views a product or service and can generate sales. If the market for a service or product is well-defined, comparative advertising can held the products or services distinguish itself from the competition. Nothing seems to do this more efficiently than

comparative advertising. In the electronic media the disparaging message is conveyed to the viewer by repeatedly showing the commercial everyday thereby ensuring that the viewers get clear message as the said commercial leaves an indelible impression in their mind. The Indian law nowhere renders comparative advertising as illegal; however, it defines a restrictive ambit. Statutes such as the Trade Marks Act, 1999 and the provision in the Constitution on the Freedom of Speech and Expression i.e. Article 19(1)(*a*), coupled with the limitations governing it, provide statutory support to the subject. In the absence of a statutory provision dedicated to comparative advertising, the jurisprudence on it is well developed through renderings and decisions of the courts.

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[1] (1995) 5 SCC 139 : AIR 1995 SC 2438.

[2] (1995) 5 SCC 139 : AIR 1995 SC 2438, 2448.

[3] (1995) 5 SCC 139 : AIR 1995 SC 2438, 2448.

[4] (1995) 5 SCC 139 : AIR 1995 SC 2438, 2448, 2447.

[5] (1995) 5 SCC 139 : AIR 1995 SC 2438, 2448.

[6] AIR 2008 Guj 94.

[7] AIR 2008 Guj 94 at 105.

[8] See *Lyne* v. *Nicholls*, (1906) 23 T.L.R. 86.

[9] see *Dunlop Pneumatic Tyre Co.* v. *Maison Talbot*, (1904) 20 T.L.R. 579.

[10] (1975) 1 WLR 972 : (1975) 2 All ER 599 cited in *Reckitt Benckiser (India) Ltd.* v. *Hindustan Lever Ltd.*, (2008) 38 PTC 139 (Del) at p. 157.

[11] (1975) 1 WLR 972 : (1975) 2 All ER 599 cited in *Reckitt Benckiser (India) Ltd.* v. *Hindustan Lever Ltd.*, (2008) 38 PTC 139 (Del) at p. 157.

[12] (1895) AC 154 HL(E).

[13] (2008) 38 PTC 139 (Del).

[14] (2008) 38 PTC 139 (Del) at pp. 165, 166.

[15] (1999) 19 PTC 741.

[16] 1895 AC 154.

[17] (1899) 1 QB 86.

[18] 1975 (2) All ER 599.

[19] *Reckitt and Colman of India Ltd.* v. *M.P. Ramchandran*, (1999) 19 PTC 741 at p. 746.

[20] (1996) PTC 16 393.

[21] (1996) PTC 16 393 at p. 398.

[22] (1996) PTC 16 393 at p. 400.

[23] (2006) 32 PTC 677 (Del).

[24] (2006) 32 PTC 677 (Del) at p. 681.

[25] (2006) 32 PTC 677 (Del)

[26] (2006) 32 PTC 677 (Del) at p. 682.

[27] (2004) 29 PTC 1 (Del).

[28] (2004) 29 PTC 1 (Del) at p. 6.

[29] AIR 2005 Del 102.

[30] (2005) 31 PTC 1 (Del).

[31] (2005) 31 PTC 1 (Del) at 9, 10.

[32] (2006) 32 PTC 307.

[33] *Pepsi Co. Inc.* v. *Hindustan Coca Cola Ltd.*, (2003) 27 PTC 305 (Del.) (DB).

[34] *Pepsi Co. Inc.* v. *Hindustan Coca Cola Ltd.*, (2003) 27 PTC 305 (Del.) (DB) at 311.