

Brand Advocates

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Abstract

The legal and marketing worlds are dynamic and challenging in nature. Life in these professions is moving at a very fast pace because the legal world is going through amendments now and then and the world of marketing is in the phase of digitalization. Apart from that, they share the fact that they both represent their clients. In the legal world, it could be a person, natural or artificial, and in the marketing world, it is the brand (company).

Keywords: Legal, surrogate marketing, cable T.V. networks act, COTPA, advertisement

INTRODUCTION AND EXPLANATION

Everyone wants to be famous, be it kings or ordinary people. Everyone wants to be in the limelight. This is the psychology of the majority of the people in this world. "Person" refers not only to human beings but also to "artificial persons," like companies. The difference between the two is that a human being has a soul and can speak for himself/herself. Furthermore, word of mouth in regards to the character, nature, and qualities of a person travels faster than light (in a fictional tone). But when it comes to companies or brands, the name alone is not enough at first. The company/brand has to make efforts to justify the quality of the product. If their product wins the suit in the court of consumers/customers, then the brand becomes a star. But to complete this journey, the brand needs an advocate. In this case, the marketing team of the company advocates the brand via "advertisement".

Basically, an advertisement is doing more or less the same work as an artificial person. As per the literal meaning of "an advertisement," "an advertisement is a promotion, marketing a product, service, and brand to a viewership in order to attract the attention, interest, and engagement of the person to influence him/her in such a way that the footfall increases and, ultimately, the sales rocket high as well."

You can see now that an advertisement is also representing the traits of a product, so that the target consumer or customer can be influenced to purchase one of the products of that particular brand and also refer the same to others [1].

Every story has some grey shades, and here also, it is not untouched, i.e., the advertisements for productive and useful products are very important for society as they make people aware of and

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spread information about a certain product which can solve their problem or make their life easier, but the trouble starts when they also advertise negative or prohibited products indirectly. So, these types of products generally have fewer benefits and more of a pleasure factor for the consumer after purchasing them.

The issue is with the grey zoned products that are both lawful and yet unlawful. By adding in the moral, ethical, and societal factors, opinions, and

perceptions, it becomes a cocktail; these products are liquors, tobacco, etc. They use a technique known as "surrogate marketing." Surrogate advertisements are advertisements for products which are not allowed to be advertised openly like other normal products [2]. It is a method of advertising a prohibited product by advertising an alternate product with similar packaging, colour, size, and so on. For example, alcohol companies are not permitted to advertise their primary product (alcohol), therefore, they manufacture a secondary product like soda water or pan masala, etc., so the brand awareness, brand recall, and brand recognition value of the company should be increased both in frequency and magnitude in the mind of the customer the brand is marked forever [3].

The customer is also sometimes deceived because the packaging of the product is the same. Furthermore, the name of the product is not flashed, but instead the brand name is always flashed. Hence, the customer remembers the brand name when he/she wants to buy a product from that company [4, 5].

The world of marketing plays with the minds of customers in both psychological and legal ways with the authorities. Companies here indirectly and covertly advertise their prohibited products [6]. Basically, companies hire celebrities to endorse their brands. They associate their brand with a celebrity, which increases the recall value and recognition magnitude of the brand because the product is, to an extent, personified by that celebrity [1].

Cigarettes and other tobacco products (prohibition of advertisement and regulation of trade and commerce, production, supply, and distribution) ACT, 2003 ("COTPA"): Section 5 of the Act prohibits the advertisement of "tobacco products" by both direct and indirect means [7]. Tobacco products clearly set out that the use of a name or brand of tobacco products for marketing, promoting or advertising other products would constitute a form of "indirect advertisement". Accordingly, surrogate advertising carried out by tobacco companies would constitute a form of indirect advertisement and would consequently be prohibited under Section 5.

In India as per the Cable Television Networks (Regulation) Act, 1995: Rule 7(2)(viii) of the Cable Television Rules clearly prohibits the direct or indirect promotion and advertisement of "cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants"; However, the proviso to this rule also runs as: "Provided that a product that uses a brand name or logo, which is also used for cigarettes, tobacco products, wine, alcohol, liquor, or other intoxicants, may be advertised on cable services subject to the following conditions that:

- The story board or visual of the advertisement must depict only the product being advertised and not the prohibited products in any form or manner;
- The advertisement must not make any direct or indirect reference to prohibited products;
- The advertisement must not contain any nuances or phrases promoting prohibited products;
- The advertisement must not use particular colors and layout or presentations associated with prohibited products;
- The advertisement must not use situations typical for promotion of prohibited products when advertising the other products [8].

TOBACCO CONTROL FRAMEWORK CONVENTION (FCTC)

Indian Government amended FCTC on February 5, 2004 and it came into force on February 27, 2005. The objective is to protect present and future generations from the devastating health, social, environmental, and economic side-effects of tobacco consumption and exposure to tobacco smoke. By providing a framework for tobacco control measures [8].

As per the guidelines issued by the Central Consumer Protection Authority (CCPA) in June, 2022, a Rs. 10 lakh penalty is payable for the first violation and a Rs. 50 lakh penalty is payable for violations after the first violation will be levied. The main goal of the Ministry of Consumer Affairs is

to protect customers from misleading advertisements and to have a check and balance for companies [9, 10].

CONCLUSION

The law and ethics have a long-standing tussle on this matter because the companies found a loophole to advertise their products, but society is adversely affected to an extent. Also, the social responsibility of people, especially those who are public figures, needs to be more self-ignited and self-conscientious towards the betterment of society. The authorities need to be more vigilant in this regard as well. Moreover, there should be a balance between what to advertise, how to advertise, and what not to advertise. The focus/main guiding principle here should be the social development and welfare of society. As the constitution also grants freedom of speech with certain restrictions, so, something similar should happen in the world of marketing as well.

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