



ETHICAL ISSUE OF SURROGATE ADVERTISEMENTS IN INDIAN ADVERTISING SCENARIO: AN EMPIRICAL STUDY

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Abstract

Advertising is a broad, sensitive and also a varied subject. Its effect extends from the society to the business, from economics to education. Advertisement not only develop awareness about products but also increases the choices for taking rational decisions for consumers and it leads to all sorts of healthy and unhealthy practices by distributors and marketers. Surrogate advertisement is one of the forms of advertising which is typically used to promote banned products such as alcohol and cigarettes. Marketers usually use surrogate advertisements and brand extensions for propagating the banned products like liquor and tobacco. In a country like India, a large portion of the income of population is spent for harmful products like cigarettes and alcohol which in the long run is leading to a lot of health hazards. Surrogate advertising has always been under controversies. Critics try to associate it with fraud, immorality, manipulation and health hazards. Therefore, surrogate advertising has become a moral issue in the advertisement market in India and has emerged as a loophole challenge over the Government's legal action. This paper is an empirical study over the ethical issue of surrogate advertisement in India today and use secondary information to derive some concrete conclusion.

Key Words: *Harmful Products, Loophole Challenge, Moral Issue, Surrogate Advertisement, Unhealthy Practices.*

01. INTRODUCTION

Surrogate advertising is one of the emerging ethical issues in advertising in India. This is a corporate strategically approach in marketing of hard products i.e. banned to promote products. It relates to advertising by duplicating the brand image of one product widely to promote another product of the same brand. When consumers follow these advertisements, they associate these with banned products. Hence, such products are indirectly advertised, and therefore, influence their behaviour. Earlier in India it was started by Hindustan Unilever Limited (HUL) by extending lux soaps to shampoo, the main idea was not exactly the surrogate advertisement but with the advertisement of shampoo, Soap was also promoted because of the well established brand image of lux soaps; that is why sometimes it is also called brand extension advertising. Later on it was adopted by the marketers of banned to promote products including alcohol, tobacco & cigarettes. Surrogate advertisements include use of different advertising media like television commercials, bill boards and hoarding, and sometimes celebrity endorsement is also adopted as marketing strategy to make these advertisements work.

02. OBJECTIVES OF THE STUDY

The present study has been taken with an objective of examining the relevance of surrogate advertisement in the context of ethical issue related with Indian marketing and advertising scenario. To be specific, the broad objectives of the study are -

- To explore the idea of Surrogate advertising.
- To describes the history and development of surrogate advertising in India.
- To discusses on the ethical issue of surrogate advertisement in a developing country like India.
- To highlight some of the measures needed for the development of healthy marketing and advertising scenario in India.

Accordingly, the reminder of the paper is organised as under. Section three discuss on the conceptual issues on surrogate advertising. Section four describes the genesis and development of surrogate advertising in India. Section five explains the advantages and problems of the same. Section six examines the ethical issue of surrogate advertising. Section seven discuss on the various legal action initiated by the Government to control surrogate advertising and section eight highlight the debate against the legal action. Section nine recommends some of the measures that can control the unhealthy practice of surrogate advertising in India; the last section i.e. section ten is devoted for concluding observations.

The study is basically exploratory in nature and depends exclusively on secondary data. Secondary data are collected from various reports published by ASCI, GOI, KPMG, Price Water house and other research papers on surrogate advertising.

03. SURROGATE ADVERTISEMENT: CONCEPTUAL ASPECT

The dictionary meaning of surrogate is substitute and the term has often been used in relation with surrogate motherhood. The concept is not different in advertising as surrogate advertisements do not reveal the banned product per se, with an aim to keep the brand name of those products alive, whose advertisements have been banned. This is done by introducing, for example, other non-alcoholic or harmless products under the same brand name. This way liquor and tobacco companies launch completely different products keeping the same brand name (hence the term, surrogate). Such an alternative channel

to remind prohibited products through constant publicity of its brand name used for other harmless products is called surrogate advertising.

Surrogate advertising is a form of advertising which is used to endorse banned products, like cigarettes and alcohol in the disguise of another product. This type of advertising uses a product of a fairly close category, as: club soda, mineral water in case of alcohol, or products of a completely different category (for example, music CD's or playing cards) to mallet the brand name into the heads of consumers. The banned product (alcohol or cigarettes) may not be projected directly to consumers but rather masked under another product under the same brand name, so that whenever there is mention of that brand, people start associating it with its main product (the alcohol or cigarette). In India there is a large number of companies doing surrogate advertising, from Bacardi Blast music CD's, Bagpiper Club Soda to Officers Choice playing cards.

04. HISTORY OF SURROGATE ADVERTISEMENT

It was believed that surrogate advertisement first emerged in Britain when wives start protesting alcohol advertisement which provokes million of husbands for drinking. The protest got massive response resulting in ban on advertisement of liquor product. In India surrogate advertisement is done mainly for tobacco and liquor product. This is because the advertisement of these products has been overtly banned as they are considered to be products that put adverse affect on the mind of the consumers and lead them to use substances that have an addictive affect and create uneasiness for the members of the general public who do not prefer using these substances. In our country, on an average around 15 million people consume liquor and approx 250 million people in some or other forms consume tobacco. In 1995, due to continuous efforts and awareness, Government of India imposed ban on tobacco and liquor advertisement in television through Information and Broadcasting Ministry by Cable Television Network (Regulation) Act. It was a huge setback for tobacco and alcohol industry as television and radio is one of the most effective media to influence people in a large scale. The companies started to endorse other products under the same brand to arrest the falling demand of the target product in the absence of publicity. As per Information and Broadcasting Ministry surrogate advertisement means advertisement of the product other than alcohol and tobacco by the manufacturer of alcohol and tobacco industry under the same brand name. For example - Mc Dowells water and soda (surrogate product) for Mc Dowells liquor (target product), Pan Masala (surrogate product) for Pan Parag Gutkha (target product), Gold Flake tennis tournament (surrogate service) for Gold Flake cigarette (target product). Actually the purpose of surrogate advertising is more of reinforcing brand recall than to boost the overall sales of the company. It is also true that the product through which the companies are marketing their main product may not necessarily be available in the market. A list of the brands adopting surrogate advertisement in India is given below:-

Table 3.1: Different Brand promotion against its surrogates in India

Product category	Brand	Surrogates
Tobacco	Rajnighanda	Kesar Pan Masla
	Goa Gutka	Pan Masala
	Pan Parag	Pan Masala
	Manikchand	Filmfare Awards
Cigarettes	Red & white Cigarettes	bravery award ceremony
	Gold Flake	Tennis Tournaments
	Wills Lifestyle	India Fashion Week, Lifestyle (textiles) showrooms, Indian Cricket Team/Matches
	Charms	Audiocassettes and CDs.
	Four Square white	water rafting& Gliding
Alcohol Beverages	Seagram's	Music
	Mc Dowells No. 1 platinum	Water and Soda
	Bagpiper	Water, Soda, and Music – cassettes & CDs
	Red and White	Bravery Awards
	Bacardi	Music
	Kingfisher	Mineral Water and Calendars
	Wills Lifestyle	Apparels, Accessories
	White Mischief	Holiday Resort
	Imperial Blue	Cassettes & CDs
	Smirnoff Vodka	Fruit Juices
Royal Challenge	Golf Tournaments	

	Aristocrat	Apple Juice
	Officer's Choice	Social Obligation towards Society
	Hayward's 5000	soda and packaged drinking water
	Royal Stag	Music CD and Mega Cricket

Source: "What is surrogate Advertising" by Arvind Ravikumar on Marketing faq, November 28th, 2011

05. BENEFITS / LIMITATIONS OF SURROGATE ADVERTISEMENT

There are certain advantages and disadvantages of surrogate advertisement, which are discussed below-

▪ Benefits

- Corporate sector has to pay a substantial amount of money for advertisement. Surrogate advertising to a great extent save companies from huge advertisement expenditure and thus help in dropping of product price.
- Surrogate advertisement is very much beneficial for domestic players; it not only limits the entry of various MNCs but also create difficulty for new entrants for brand building.
- A ban on advertisement reduces the competition to certain extent.

▪ Limitations

- As per Advertising Standard Council of India (ASCI) surrogate advertising is harmful for the society as a whole. ASCI argue that there is no logic of using the brand name of banned product for marketing the products like mineral water.
- Ban of surrogate advertising ultimately affects the sale of banned product.
- Due to a ban, not only sale of the products get adversely affected but also result in a loss of revenue of TV channel and media.
- Most of the times a ban result in acquisition of small domestic companies by various MNCs.

06. ETHICAL ISSUE IN SURROGATE ADVERTISEMENT

In India, a market survey in 2001 revealed that advertising has a direct influence on the consumption habits of 431 million people in the country and an indirect impact on 275 million 'aspirants' from the lower income group. Considering this and realizing that nearly 50 per cent of the television owners have access to cable channels, there is no doubt that the veiled call for alcohol consumption behind the surrogate advertisements is not escaping the eyes of viewers in the world's fourth highest liquor-consuming country. In fact, surrogate advertising defeats the very purpose of banning liquor advertisements. Each day 55,000 children in India start using tobacco, Gutkha the chewable tobacco which are aimed at the younger generation of the country. According to research done by the Salaam Bombay Foundation in 2004, it was found that almost 70 % of the children in the age group of 12 to 17 years are able to associate the slogan of a surrogate advertisement with the brand.

07. LEGAL ACTION AGAINST SURROGATE ADVERTISEMENT

Surrogate advertising is dedicated towards using an insignificant, "harmless" product to increase or maintain awareness for their primary "harmful" brand. In India, the thrust on surrogate advertisement gathered momentum with the Cable TV Network Regulation Act, which prohibits tobacco and liquor advertisements on TV channels in 2001. The liquor industry has intentionally blurred the line between products, advertising 'old wine' in a 'new bottle,' only this time with a soft-drink label. In 2002, the I&B Ministry had banned 12 advertisements and leading satellite TV channels including Zee, Sony, STAR and Aaj Tak were issued show cause notices to explain their rationale behind carrying surrogate liquor advertisements.

Some of the national and international regulations related to surrogate advertising are as follows –

- **The cable Television Networks (Regulations) [CTNA] Act, 1995:** The CTNA Act regulates the operation of cable television networks in India. As per rule 7 (1) of the Cable Television Networks Rule, 1994, enacted under the provision of Section 22, "Advertising carried in the cable service shall be so designed as to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers". Further rule 7 (2) (vii) (a) states that, "No advertisement shall be permitted which promotes directly or indirectly production, sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants".
- **The advertising Standard Council of India (ASCI):** ASCI is a self regulatory council which came in power to safeguard the interest of general people by controlling the content of advertisements. Further it also enjoy the right to judge any advertisement as indirect one and is applicable to all types of advertisements e.g. newspaper, radio, television, cinemas, websites etc. As per clause 6 of the code of advertisement of the products for which advertising has been restricted should not avoid the restriction by purporting to be advertisements for other products, the advertisement for which is not prohibited.

- **Framework Convention on Tobacco Control:** This convention came in force on 27th February, 2005 to safeguard health, social, economic and environmental interest of general mass from the ill effects of tobacco.
- **Cigarettes and other tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003:** As per section 5 of the COPTA Act, the advertisement of tobacco products in direct or indirect way is prohibited. It was mentioned in sub para (i) (ii) (iii) and (iv) of rule 2 of the COPTA Act that use of a name or brand of tobacco products for marketing, promoting or advertising other product would mean indirect advertisement. Thus surrogate advertising conducted by the tobacco companies will signify indirect marketing of mother product and hence prohibited under section 5 of the Act.
- **Decisions of various Courts in India**
 - GOI passed COTPA in 2003, before becoming a member to the FCTC (Framework Convention on Tobacco Control). In 2005, the Ministry of Health and Family Welfare exercised the powers granted to it by COTPA by promulgating rules on tobacco advertising. These rules included restrictions on advertising allowed at point-of-sale, such as demanding a health warning, limiting the size of the advertising and prohibiting lighting or pack images. The rules also included a definition of “indirect advertising” [Rule 2(e) of the COPTA Rules]. The tobacco industry challenged the Rules in the Mumbai High Court and the Court issued an interim order staying the implementation of the Rules on March 27, 2006.
 - In 2013, a petitioner alleged that interim stay on Rule 2(e) of 2005 Rules resulted in unbridled “surrogate advertisements” of tobacco products and thus the Supreme Court banned surrogate advertisement of tobacco products by lifting a seven-year-old interim order of the Bombay high court on 22nd July 2013.
 - A PIL was filed against the IPL team “Royal Challengers” due to its clear connection with “Royal Challenge”, a liquor brand promoted by the same company. However, Supreme Court pointed out that since the team was named “Royal Challengers” and not “Royal Challenge”; only those people who are alcoholics / drinkers will be attracted by it and the non-drinkers / non-alcoholics will not be affected. The Court exercised its judicial insight in this decision as it liberally interpreted the concept .
 - A public interest litigation had been filed in the Delhi high court on September 3, 2014 seeking a ban on surrogate advertising of tobacco and liquor products. However, this matter is still in sub-judice.

08. THE DEBATE

Government of India (GOI) has taken a lot of legal measures to implement the advertisement ban effectively. However, the ban on indirect advertisement of tobacco products has suffered a serious setback due to legal challenges and inadequate enforcement. Cigarettes and liquor producing companies are using surrogate advertisement and brand stretching in a great manner with an objective to compensate the losses arising out of the ban on advertisement of one particular product. The companies claim that legal action has been implemented and advertisements of liquor are banned; but the very objective of the GOI behind imposing the ban is yet to be fulfilled. Therefore, the banning of surrogate advertisement has become a very controversial and sensitive issue. The producer companies argue that while the Government allows them to do business on one hand and impose a high rate of tax on their profit but it does not allow them to conduct their business in a profitable manner by banning one of their most important weapons of increasing sales ‘advertisement’. Again ban on surrogate advertisement has affected media companies also in terms of revenue loss.

09. POSSIBLE MEASURES TO CONTROL UNETHICAL SURROGATE ADVERTISEMENT

Surrogate advertisements are not only misleading, but also fake and dishonest in a lot of cases. With surrogate advertising so widespread, this is the right time to tackle the problem head-on. There should be strict regulatory measures to curb the practice of unethical indirect advertisement. Some of the measures are discussed below -

- Making transparent laws banning surrogate advertisements for various products under a single brand name, by amending the Trade Marks Act, for instance.
- Providing enough power to the Advertising Standards Council of India (ASCI) to enable it take action against fake and misleading advertisements, and keep a close vigil over cunning evasion of the law.
- Asking the electronic and print media to strictly adhere to the advertisement codes and not encourages surrogate advertisements.
- Calling on the ASCI address complaints received from consumers against surrogate advertisements and take proper and timely actions immediately.
- Creating a consumer awareness programme to help people to understand the negative aspect of surrogate advertisements.



- Adopting strict laws to penalize those companies who are broadcasting surrogate advertisements without any real existence of the product.
- Encouraging those advertising agencies who has full knowledge of the products under the same brand for which they are promoting advertisements, and taking legal actions against those agencies who are designing surrogate advertisements.

10. CONCLUSION

Advertisements have a strong influence in our life. We like them because they provide information and create awareness about the market. Their significance in corporate world cannot be underestimated. Surrogate advertising has been a powerful medium through which a particular brand reaches to its consumers. It has played a vibrant role for the brands to sustain in the market even after banning the advertisements of their original products. But many times, surrogate advertisements are accused of misleading people. Such instances have been reported in the advertisements endorsing alcoholic drinks, cigarettes & other tobacco products. But as these products have remarkable demand and thus contribute heavily in generating revenue it is not feasible for the GOI to abolish them in totality. So to fair shake between responsibility and income the GOI allows only surrogate advertising to continue. It is the need of hour that GOI should strictly follow the legal measures against surrogate advertisement for anti-health product besides taking consumer awareness programme for the mass.

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