



## THE LEGAL ASPECT OF SURROGATE ADVERTISING

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### **Abstract**

*This study looks into the reasons, which have led to the emergence of surrogate advertising in India. While the Government has come up with laws and councils prohibiting the advertising of restricted products, the companies to counter these laws, have come up with innovative strategies to promote their brand and product.*

### **INTRODUCTION**

#### **Surrogate Advertising**

(Singh) The brand image of one product extensively to promote another product of the same brand is the literal meaning of 'Surrogate Advertising.' This form of advertising is when an advertisement has the logo or brand of another company advertised within it. The product shown in the advertisement is called the 'surrogate.' The surrogate can either resemble the original product or could be a different product altogether, but still use the established brand of the original product. Activities such as sponsoring of sports/cultural/leisure events are all surrogate-advertising techniques. Some examples of Surrogate Advertising are Manikchand', manufacturers of gutkha patronized the Film fare awards ceremony, Wills' (brand of ITC, a subsidiary of British American Tobacco) used to sponsor Indian cricket team/matches, Tennis tournaments were sponsored by 'Gold Flake' cigarette etc.

### **LITERATURE REVIEW**

**Mehta (2003)** feels that Surrogate advertising is misleading and also presents false and dishonest information in many cases. She concluded that since it has very negative effect on the markets as a whole time has come to tackle the problem and stringent regulatory measures should be in place to curb such practice.

**Chander and Sharma (2006)**, tried to study the perception of people towards surrogate advertising by using a statistical tool factor analysis. The results of their research pointed out that perceptions regarding surrogate advertising were more on the negative side rather than being on the positive side. A large proportion of the respondents felt that surrogate advertising is anti-social as it tries to promote the product that is generally considered as harmful for the society, it promotes wrong impressions and tries to fool the customer insulting customer intelligence, leads to moral degradation and is deceptive. However a few respondents took surrogate advertisements as a way of fair practice, entertaining and associated it with modern life style. A set of respondents were completely unaware of the phenomena of surrogate advertising while a few others were confused about the same. This research led to the conclusion that whatsoever may be the positive perceptions revealed, still a lot of people perceived surrogate advertising as negative, unethical and immoral.

### **RESEARCH DESIGN**

#### **Objective**

- To identify the extent to which companies' are bending laws and ethical norms in order to promote themselves using surrogates advertising.

#### **Scope**

- The study only looks at laws governing advertising and how the companies manage to advertise surpassing the laws in a legal way, though unethical.

#### **Sources of Data**

A qualitative secondary exploratory research of existing practices in the field of surrogate advertising, laws challenging them and loopholes being used.

#### **Data Analysis and Interpretation**

- Section 5 of COPTA prohibits advertising of tobacco products directly and indirectly. Because surrogate advertising constitutes indirect and it was mentioned under rule 2 of COPTA rules, tobacco advertising is mostly not existent in India.



- Cable Television Networks Act 1995 prevents any cable or channels to have advertisements regarding tobacco products.
- Clause 6 of Advertisements Council of India states that companies should not find ways to advertise products for which advertisements are banned by implying them for other products.

If there are so many laws then why is no one acting upon surrogate advertising when many cases are quite evident?  
(Goyal, 2009) (Bag, 2014) This is possible only because of the following reason

1. **Flexible Laws** – One significant example is of the IPL team Royal Challengers Bengaluru an obvious and blatant form of surrogate advertising for liquor brand “Royal Challengers” and when the matter went to the Supreme Court, the Court held of the observation in a lighter vein, alluding the fact that the team was not named ‘Royal Challenge’, the liquor brand, but “Royal Challengers” and that “Only those who drink can be attracted to these things”. Thus the IBF (Indian Broadcasting Foundation) has started to take on the surrogate liquor advertisements and it was ruled that if liquor companies promote any juice, mineral water or soda, which should be shown in a proper manner and not as trimmings to liquor.
2. **Innovation** - There are many alcoholic brands that utilise marketing strategies that they keep on changing and coming up with innovative ideas which is the side-lining the legislation which even though look perfectly alright but the impact is left in the viewer’s mind is something else. It seems that they are secretly trading their brand and the real intentions remain to be subtle. “Be what you want to be” – this what Bacardi ad ends with and it keeps on running in your head , although the ad portrays that Bacardi is showing music CDs and music promotion but the people holding a glass of liquor and grooving to the music. And the ad ends like “Bacardi-CDs and Audio Cassettes”.
3. **Unknown and Under Regulated Spaces** – Social Networking sites, Facebook pages, YouTube videos don’t constitute advertising but are a way of promoting their brands in forms which are close to advertising. Kingfisher has a Facebook Page, Twitters and Foursquare to promote their brands and as far as regulations are concerned, these areas are yet to be covered.
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5. **Brand Image** - Brands create an aura around themselves. This compels loyal followers to remain anywhere but outside that aura. The brands reflect well-being or status consciousness, especially in the middle and higher income group, the culture of these brands has had an impact which cannot be replaced. Surrogate advertising helps infuse life into these brands which the Government would rather see dead through the bans they place.
6. **Economic Benefits** - The benefits the economy of a country gets through these “restricted products” is so high through taxes and sales that sometimes the regulatory authorities are forced to cast a blind eye. Also the companies feel that the most effective way of popularizing a brand is through advertising and when that method is blocked even in the subtlest ways it becomes very difficult for existing and new companies to develop and come up respectively.

## CONCLUSION

Even though there are laws in place, which prohibit different forms of indirect advertising of restricted products, companies have found loopholes to go around them. This implies that the laws are weak and require reinforcement, or the benefits of these products seem to be very important for the economy, advertising of these products should be legalized. Using the middle ground approach makes the legislative framework look weak.

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