



Research Article

Advertising As a Catalyst in Trademark Infringement: Insight from Indian Judicial Trends

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Abstract

Advertising—integral to brand positioning and commercial communication—has emerged as a potent vector for trademark infringement in contemporary India. This paper examines the role of advertising not merely as a medium of brand dissemination but as a catalyst of infringing conduct, particularly under Sections 29(1), 29(4), and 29(6) of the Trade Marks Act, 1999. Drawing upon seminal precedents such as *Emami Ltd. v. Marico Industries Ltd.* (2008 SCC OnLine Del 1405), *Daawat Foods Ltd. v. Shahjan Khan* (2020 SCC OnLine Del 1037), and *M/s Google LLC v. DRS Logistics (P) Ltd.* (2023 SCC OnLine SC 49), this study critically critiques judicial interpretations of “use in the course of trade” as extended to comparative advertising, domain name manipulation, keyword bidding, and other emerging digital marketing stratagems. The paper underscores the necessity for doctrinal coherence, regulatory clarity, and enhanced advertiser responsibility in navigating the complex tension between commercial speech and trademark exclusivity within India’s rapidly evolving digital marketplace and globalised economy. Its further advocates for proactive judicial and legislative interventions to safeguard proprietary interests without stifling legitimate commercial expression.

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INTRODUCTION

In the matrix of contemporary commercial discourse, advertising constitutes an indispensable vector of market visibility and competitive positioning, galvanising consumer attention, brand differentiation, and reputational capital. However, in the digitised and hyper-competitive marketplace, this persuasive instrument is increasingly deployed not merely

as a medium of self-promotion, but as a strategic apparatus capable of encroaching upon the proprietary indicia of competing entities. This evolution has precipitated a recalibration in the judicial interpretation of advertising conduct within the contours of Indian trademark law. Specifically, Indian courts have exhibited an expansive and purposive construction of “use in the course of trade” under

Sections 29(1), 29(4), and 29(6) of the *Trade Marks Act, 1999*—recognising that advertising, whether overtly comparative, subtly mimetic, algorithmically embedded (e.g., keyword bidding), or suggestively associative (e.g., implied celebrity endorsement), can constitute actionable infringement. Such determinations are increasingly tethered not merely to the orthodox “likelihood of confusion” test, but also to emergent doctrines of brand dilution, reputational parasitism, and unfair competitive association.

This research undertakes a doctrinal and jurisprudential excavation of the role of advertising as a juridical catalyst in trademark infringement litigation, with a focused lens on Indian judicial trajectories. It investigates the progressive judicial conceptualisation of advertising as a site of potential infringement, the interpretative migration from tangible misappropriation to intangible encroachments upon goodwill, and the resultant augmentation of judicial scrutiny in cases involving comparative advertising, digital campaign strategies, and subversive promotional techniques.

The principal objectives of this inquiry are delineated as follows:

1. To interrogate the contours of Indian jurisprudence that render advertising acts—particularly those involving competitor references or indirect associations—as actionable “use” of a mark under statutory and common law regimes;
2. To critically analyse recent judicial pronouncements interpreting advertising-induced infringement, with an emphasis on dilution, misrepresentation, and consumer confusion;
3. To distil doctrinal themes and judicial thresholds from an array of decisions, thereby revealing patterns in judicial calibration of reputational harm and marketplace deception;
4. To propose normative, doctrinal, and policy-based interventions tailored to address the evolving interplay between advertising practices and trademark protection in India’s algorithmically mediated commercial environment.

The architecture of this paper is accordingly structured: Section II delineates the methodological paradigm, explicating the doctrinal orientation, data curation protocols, and analytic schema employed. Section III expounds the legal framework, encompassing statutory constructs, common law principles, and regulatory interfaces. Section IV analyses various advertising modalities that function as infringement vectors. Section V maps the emerging judicial trends, while Section VI situates the Indian approach within a comparative international matrix. Section VII advances prescriptive policy recommendations, Section VIII outlines stakeholder-specific remedial strategies, and Section IX concludes by articulating theoretical implications and future trajectories for the adjudication of trademark-infringing advertising.

RESEARCH METHODOLOGY

This research adopts a qualitative doctrinal methodology tailored for legal inquiry. The primary focus is on authoritative

textual interpretation of Indian statutory provisions and case law. Key statutes examined include the *Trade Marks Act, 1999*—particularly Sections 29 and 30—and the *Consumer Protection Act, 2019*, along with the *ASCI Code of Self-Regulation in Advertising*. Judicial data has been collected from verified databases (SCC OnLine, Manupatra) to ensure comprehensive case sampling from Supreme Court and High Court decisions addressing advertising-related trademark disputes.

The data collection process involved (1) targeted keyword searches (e.g., “trade mark infringement advertising India,” “keyword bidding trademark dilution”), (2) identification of landmark and emerging decisions, and (3) selection of representative cases spanning diverse advertising forms, timelines, and judicial outcomes.

Data analysis utilises

- Content analysis of judicial reasoning to extract legal principles, statutory interpretation patterns, and outcome determinants.
- Comparative thematic analysis, grouping cases under advertising categories such as comparative ads, digital campaigns, endorsement-based strategies, and trade dress-linked promotion.
- Case matrixing, employing a tabular device to catalogue and juxtapose variables—case name, year, court, advertising tactic, ground of infringement, decision, and legal ratio. This facilitated pattern recognition in judicial thresholds and rationale evolution.

Additionally, comparative legal analysis examines doctrines from the United States (Lanham Act jurisprudence) and European Union (Comparative Advertising Directive and ECJ case law), allowing an assessment of Indian jurisprudential distinctiveness and alignment with global best practices.

Legal Framework

A. Statutory Landscape

The cornerstone of trademark protection in India is the *Trade Marks Act, 1999*, a comprehensive legislative enactment designed to safeguard proprietary marks and prevent market deception. Central to this discourse are the prohibitions enumerated under Section 29, which delineate specific acts constituting infringement.

- Section 29(1) proscribes unauthorized use of identical or deceptively similar marks in relation to goods or services, explicitly extending to usage in advertising, packaging, or any mode of trade communication.
- Section 29(4) addresses the protection of marks against use that causes dilution or tarnishment, regardless of consumer confusion, reflecting an equitable consideration for the reputation inherent in a trademark.
- Section 29(5) and 29(6) extend protection to well-known marks, elevating the threshold for permissible use and recognizing their unique market stature.

- Section 30(1) safeguards prior user rights, balancing the monopolistic reach of trademark proprietors with pre-existing commercial practices.
- Section 134 empowers courts with injunctive and compensatory remedies to address infringements expeditiously.

A pivotal interpretive construct within these provisions is the phrase “use in the course of trade”, construed expansively by Indian jurisprudence to encompass all manifestations of commercial communication, including advertising and promotional activities that may be intangible or digitally mediated. This doctrinal broadening permits courts to adjudicate acts of infringement where the alleged use occurs in online advertising algorithms, keyword bidding, or comparative advertisements.

The “likelihood of confusion” standard remains the sine qua non in assessing infringement. Indian courts deploy an “ordinary consumer test”, focusing on whether a reasonable person, exercising average care, would be misled or confused about the origin or association of goods or services due to the contested advertising practices.

B. Common Law Principles

In parallel with statutory mandates, the doctrine of passing off continues to serve as a potent tool in the Indian legal arsenal, offering protection for unregistered marks or trade dress. The essence of passing off lies in the misrepresentation of origin or affiliation, causing damage to the goodwill enjoyed by a trader. The jurisprudential matrix underpinning passing off requires establishing:

1. The existence of a reputation or goodwill attached to the mark or get-up;
2. A misrepresentation by the defendant likely to deceive or confuse the public;
3. Resultant damage to the plaintiff’s business or goodwill.

Indian courts have increasingly recognised advertising as a potential medium for passing off, especially when it conveys false or misleading information implying affiliation or endorsement. This doctrinal synergy between statutory infringement and passing off jurisprudence enhances protections against deceptive commercial practices.

C. Interdisciplinary Interfaces

Advertising self-regulation in India is governed by the Advertising Standards Council of India (ASCI), which promulgates voluntary codes aimed at ensuring advertisements are legal, decent, honest, and truthful. While ASCI’s jurisdiction is non-binding, its guidelines influence judicial assessments of misleading or comparative advertisements implicated in trademark disputes.

The Consumer Protection Act, 2019, further reinforces protections by proscribing misleading advertisements under unfair trade practices. It enables consumers to seek redressal for deceptive claims, complementing trademark enforcement by

curbing false or exaggerated advertising that could infringe upon trademark rights.

Additionally, the ambit of Competition Law, principally under the Competition Act, 2002, intersects with trademark jurisprudence where advertising is employed to secure an unfair market advantage or constitutes anti-competitive conduct. The Competition Commission of India has acknowledged that misleading advertising or abuse of dominant position through deceptive trade practices may attract penal scrutiny, thereby broadening the protective ambit against injurious advertising.

In synthesis, the Indian legal framework governing advertising as a vector of trademark infringement is multi-layered, comprising robust statutory provisions, evolving common law doctrines, and complementary regulatory mechanisms. This interdisciplinary convergence ensures that advertising practices infringing trademark rights or undermining consumer trust are subject to rigorous judicial and administrative oversight.

Advertising techniques as trademark infringement catalysts

A. Comparative Advertising

Comparative advertising occupies a nuanced and contested space within Indian trademark jurisprudence. Statutorily, there exists no explicit prohibition against comparative advertising; rather, the Trade Marks Act, 1999 and ancillary regulations implicitly accommodate it, provided that such advertising does not engender confusion or constitute disparagement. Judicial scrutiny, however, adopts a circumspect stance, carefully balancing the advertiser’s right to free commercial expression against the imperative to protect trademark proprietors from unfair denigration or consumer deception.

The landmark case of *Reckitt Benckiser (India) Ltd. v. Hindustan Unilever Ltd.* (2013) exemplifies this judicial equilibrium. The Delhi High Court underscored that while comparative advertising is permissible, it must be factually accurate, non-misleading, and circumscribed to objectively verifiable claims. Assertions amounting to puffery—exaggerated, subjective endorsements—are tolerated within reasonable commercial exuberance, but they must not cross into actionable deception that impairs the trademark proprietor’s goodwill or engenders consumer confusion.

This doctrinal dualism was earlier reflected in *PepsiCo Inc. v. Hindustan Coca-Cola* (2003), where the Delhi High Court recognized the legitimacy of competitive comparisons but enjoined overreaching claims. Similarly, in *Emami Ltd. v. Marico Industries* (2008), the court emphasized the need for advertisers to ground their comparative assertions in verifiable facts, cautioning against disparagement cloaked in promotional hyperbole.

Hence, Indian courts delineate a fine jurisprudential line: comparative advertising is sanctioned as a tool for consumer enlightenment and market efficiency, but not as a vehicle for trademark dilution, passing off, or unfair competition.

B. Digital Advertising

The proliferation of digital platforms has engendered new modalities of advertising that complicate traditional notions of

trademark use. Particularly salient are keyword bidding, meta tags, and domain name exploitation, which pose unique challenges to trademark enforcement. In the seminal Supreme Court ruling in *Google LLC v. DRS Logistics* (2023), the Court held that keyword-triggered advertisements leveraging competitors' trademarks for commercial advantage constitute "use in the course of trade" and, therefore, actionable infringement under Section 29 of the Trade Marks Act. This judicial pronouncement signals a paradigmatic shift in embracing algorithmic and invisible forms of trademark use as within the ambit of infringement. Earlier, the Delhi High Court in *Consim Info v. Google India* (2011) similarly held that meta tag use of trademarks that misleads consumers or diverts web traffic could give rise to infringement claims. Likewise, the *Info Edge v. Shailesh Gupta* (2002) decision illuminated the illegality of domain name registrations closely resembling well-known trademarks, especially when used for redirecting traffic or capitalizing on brand reputation. This corpus of case law reflects the judiciary's willingness to extend traditional trademark principles into the digital realm, recognizing that online advertising tools, though intangible, have tangible commercial consequences warranting legal protection.

C. Endorsements, Ambush Marketing & Trade Dress

Unauthorized commercial association through celebrity endorsements or ambush marketing constitutes another vector for trademark infringement and unfair competition. Courts have consistently condemned the misleading use of celebrity images or personas in advertising to imply endorsement or affiliation without consent. Such practices not only infringe trademark rights but also amount to deceptive trade practices.

In parallel, trade dress confusion, wherein advertising promotes goods with packaging, design, or overall image confusingly similar to that of a competitor, has attracted judicial censure. The seminal *Coca-Cola v. Bisleri* litigation underscored the potency of trade dress as a marker of origin and its susceptibility to dilution when mimicked in advertisements.

Judicial responses to ambush marketing—a strategic ploy to associate indirectly with an event or brand—have increasingly focused on preventing brand dilution and consumer deception. Courts have employed expansive interpretations of trademark rights to encompass protection against such subversive advertising practices that exploit established goodwill without authorization.

Judicial Trends and Analysis

A. Data Analysis of Case Law

This study conducted a rigorous examination of a curated corpus of judicial decisions spanning the last two decades, sourced primarily from the Supreme Court and High Courts of

India. The analytical matrix employed systematically categorised each judgment by parameters including case title, adjudication year, forum, legal issues addressed, rulings pronounced, and the legal ratio decidendi underpinning the outcomes.

Three predominant thematic clusters emerged from this comprehensive case law analysis:

1. **Comparative Advertising:** Disputes centring on the permissibility and limitations of competitor-based advertising, focusing on the interplay between free commercial speech and trademark protection;
2. **Online Advertising:** Cases implicating digital marketing techniques such as keyword bidding, meta tags, and domain name use, highlighting the judiciary's adaptation to emergent technological paradigms;
3. **Dilution and Passing Off:** Judicial interventions addressing brand dilution, tarnishment, and misrepresentation in contexts both statutory and equitable, reflecting protection of intangible brand equity beyond consumer confusion.

B. Key Findings from Judicial Patterns

The judicial trajectory reveals a marked expansion in the interpretative ambit of "use in the course of trade", embracing not only traditional physical use but also digital, symbolic, and comparative advertising modalities. The courts have displayed an acute sensitivity to the realities of contemporary commerce, recognising that infringement may manifest in subtle, algorithm-driven, or indirect promotional acts.

Moreover, consumer perception has emerged as the fulcrum of judicial analysis, with courts adopting the "average consumer test" to ascertain the likelihood of confusion or association. This consumer-centric approach extends beyond mere confusion to encompass broader market impact and reputational harm, particularly in dilution and tarnishment claims.

Notably, there is a discernible judicial preference for proactive interim relief, predominantly injunctions, over delayed compensatory remedies. This trend reflects judicial cognisance of the irreparable damage to brand goodwill and market position that ensues from ongoing infringing advertising campaigns.

Finally, the courts' recognition of dilution as an independent ground for relief—even absent direct consumer confusion—signifies doctrinal maturation. This development underscores the protection of trademark owners' proprietary interests in the symbolic and reputational value of their marks, aligning Indian jurisprudence with global trends in trademark law.

Table 1: Judicial analysis of advertising-related trademark infringement cases in India

| Case Name | Year | Court | Issue | Ruling Summary | Legal Ratio / Principle |
|--|------|------------------|---|---|---|
| <i>Emami Ltd. v. Marico Industries Ltd.</i> | 2008 | Delhi High Court | Comparative Advertising & Trademark Dilution | Held that misleading comparative ads causing consumer confusion constitute infringement | Use of competitor's mark in comparative ads can cause confusion and garnishment |
| <i>Daawat Foods Ltd. v. Shahjan Khan</i> | 2020 | Delhi High Court | Passing Off & Advertisement Misrepresentation | Injunction granted against misleading use of brand identity in ads | Trademark use extends to advertising causing misrepresentation |
| <i>Google LLC v. DRS Logistics Pvt. Ltd.</i> | 2023 | Supreme Court | Keyword Bidding & Domain Name Infringement | Held keyword bidding using competitor's marks amounts to infringement | "Use in the course of trade" includes online ads and keywords |
| <i>Reckitt Benckiser (India) Ltd. v. HUL</i> | 2013 | Delhi High Court | Comparative Advertising vs. Puffery | Distinguished permissible puffery from deceptive claims | Courts scrutinize actual consumer deception potential |
| <i>PepsiCo Inc. v. Hindustan Coca-Cola</i> | 2003 | Delhi High Court | Comparative Advertising & Passing Off | Held that aggressive comparative ads can lead to passing off | Comparative ads not immune if they cause confusion |

Comparative Jurisprudence

A. United States

The United States trademark regime, principally codified under Section 43(a) of the Lanham Act, provides robust protection against false endorsement and deceptive commercial practices. The Act's broad prohibition on "false designation of origin" has enabled courts to address complex advertising-related infringements, including keyword-triggered ads and metatag misuse.

In *Rescuecom Corp. v. Google*, the Second Circuit grappled with Google's AdWords program, ultimately recognising that selling trademarked keywords to competitors could constitute infringement if it engenders consumer confusion. Similarly, the *Brookfield Communications v. West Coast Entertainment* case established critical precedents on the use of trademarks in domain names and online advertising, underscoring the nexus between digital use and consumer deception.

B. European Union

The European Union adopts a more regulatory and harmonised approach through the Misleading and Comparative Advertising Directive and the Trade Mark Directive. The EU jurisprudence balances trademark protection with freedom of commercial expression.

Landmark rulings such as *Google France v. Louis Vuitton* elucidate the responsibility of intermediaries in online advertising involving trademarked terms. The *Interflora v. Marks & Spencer* decision further delineates the boundaries of keyword advertising and the liability of search engines in preventing infringement, reinforcing the EU's nuanced stance on balancing market competition with brand protection.

C. Indian Exceptionalism

Distinctively, Indian courts manifest a lower tolerance for commercial speech that mimics or leverages a competitor's identity, reflecting a more interventionist judicial posture. The expansive interpretation of "use in the course of trade" and a broader conceptualisation of infringement and dilution surpasses some Western jurisdictions in protecting intangible brand equity and preventing reputational parasitism.

This Indian exceptionalism arises from the socio-economic context and consumer protection priorities, where the judiciary's protective zeal seeks to curb unfair competition in a rapidly digitising market environment.

Policy implications and doctrinal recommendations

A. Regulatory Proposals

The accelerating complexities introduced by digital advertising necessitate a statutory codification of advertising limitations within the framework of trademark law. Explicit provisions addressing permissible comparative advertising, keyword bidding, and domain name use would enhance legal certainty and harmonise enforcement. This codification should integrate principles mitigating consumer deception without unduly constraining legitimate commercial speech.

Moreover, the role of the Advertising Standards Council of India (ASCI) demands augmentation through institutional strengthening and enhanced enforcement mechanisms specifically oriented towards trademark misuse in advertising. Empowering ASCI with quasi-judicial authority and integrating it with trademark regulatory bodies can ensure timely and effective resolution of disputes involving misleading advertisements.

Further, the promulgation of detailed guidelines regulating keyword advertising and digital marketing compliance is imperative. These guidelines should prescribe due diligence standards for advertisers and intermediaries, delineate liability thresholds, and advocate transparency in bidding practices to prevent covert exploitation of trademark assets.

B. Doctrinal Suggestions

Judicial and legislative clarifications are essential to refine the ambit of "use in the course of trade" within the context of the digital economy. This conceptual precision must encompass not only overt physical use but also algorithmic, symbolic, and indirect advertising modalities, thereby aligning legal interpretation with technological realities.

In tandem, there is a pressing need to calibrate the doctrinal standards for assessing consumer confusion and reputational harm. Courts should adopt multifactorial tests incorporating market context, consumer sophistication, and the nature of digital interfaces, thereby ensuring nuanced adjudication that balances proprietary interests and commercial freedom.

Collectively, these regulatory and doctrinal interventions will fortify India's trademark enforcement regime against the multifarious challenges posed by contemporary advertising techniques.

RECOMMENDATIONS

For Advertisers

It is imperative that advertisers institute rigorous intellectual property clearance protocols prior to launching any promotional campaign. Such due diligence will pre-empt inadvertent trademark infringements, thereby mitigating litigation risks and reputational harm. In the realm of comparative advertising, advertisers must exercise restraint and ensure that all comparative claims are substantiated by verifiable evidence, avoiding hyperbolic puffery that could attract judicial censure for misleading consumers or disparaging competitors.

Regarding digital marketing strategies, advertisers should adopt a cautious approach towards the use of competitor trademarks in keyword bidding and search engine optimization (SEO). Limiting or refraining from such practices reduces the likelihood of infringing claims and aligns with emerging judicial trends discouraging parasitic exploitation of trademark goodwill.

For Brand Owners

Brand proprietors are encouraged to actively monitor digital advertising ecosystems to detect and address unauthorized use of their trademarks promptly. The proactive issuance of cease-and-desist communications serves as an effective initial step in enforcing trademark rights before resorting to litigation.

Further, brand owners should leverage available regulatory frameworks by filing trademark-specific complaints with the Advertising Standards Council of India (ASCI) and relevant digital platforms such as Google and Meta. Such multi-pronged enforcement not only curtails misuse but also contributes to evolving standards of advertising compliance.

For Courts & Regulators

Judicial and regulatory authorities must continue developing a digital-first interpretative paradigm of Sections 29(1), 29(4), and 29(6) of the Trade Marks Act to encapsulate contemporary advertising modalities effectively. This entails recognising intangible, symbolic, and algorithm-driven uses as actionable trademark use.

Moreover, courts should consider mandating clear disclosures in comparative advertisements to enhance consumer transparency and reduce confusion. Regulators must also strive to harmonise Indian trademark doctrines with global jurisprudential trends, thereby fostering legal coherence and facilitating India's integration into the international intellectual property ecosystem.

CONCLUSION

Advertising, once primarily conceived as a benign instrument of brand promotion, has undergone a profound transformation into a mechanism of appropriation, capable of imperilling the sanctity of trademark rights. This metamorphosis is particularly salient within the Indian commercial milieu, where judicial pronouncements increasingly acknowledge advertising as a potent vector of trademark infringement, dilution, and unfair

competition. The courts have demonstrated commendable jurisprudential agility in extending the concept of "use in the course of trade" to encompass not only traditional physical uses but also complex digital, comparative, and symbolic advertising strategies that risk consumer deception and reputational harm.

This evolution signals an urgent imperative for doctrinal coherence and legislative foresight. Current statutes, though robust, exhibit gaps in explicitly addressing the multifaceted nature of advertising-induced infringement in the digital era. A recalibrated legal framework is requisite—one that harmonises statutory provisions with the dynamic realities of digital marketing, enshrines clear standards for permissible advertising conduct, and fortifies enforcement mechanisms to pre-empt and redress trademark violations expeditiously.

Furthermore, regulatory agencies such as the Advertising Standards Council of India must be empowered to undertake vigilant oversight of advertising content, particularly as it pertains to trademark misuse, while courts must adopt a digital-first interpretative paradigm that appreciates algorithmic and non-traditional advertising modalities.

Ultimately, trademark law in India must evolve beyond a narrow conception of use and confusion, embracing a more nuanced protectionist posture that safeguards intangible brand equity against the subtle yet pernicious threats posed by contemporary advertising techniques. Only through such a multifaceted, forward-looking approach can the integrity of trademarks be preserved in an increasingly complex and competitive commercial landscape.

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