

# EVALUATION OF SURROGATE ADVERTISING AND ITS LEGAL MEASURES WITH SPECIAL REFERENCE TO INDIA

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## ABSTRACT

*Surrogate advertising is done when the original product is not allowed to advertise itself on mass media. In India, alcohol brands are not allowed to give advertisements on television, so alcohol marketing firms use surrogate products like mineral water, soda, juice to hit consumers with the brand name. The brand name of the alcohol product is the same as the surrogate product. In the context of Alcohol and tobacco marketing, the only way to succeed to present a surrogate advertising which remind to regular users as well as creating curiosity among non users. One essential function that surrogate advertising does is that of brand recall and not necessarily an exercise in increasing sales. The product shown in the advertisement is called the 'surrogate.' The surrogate could either resemble the original product or could be a different product altogether, but using the established brand of the original product. The sponsoring of sports/cultural/leisure events and activities using a liquor brand name also falls in the category of surrogate advertising. This paper critically examines the various factor of surrogate advertising like evolution of surrogate advertising, their impact, and emerging trends in surrogate advertising, increased awareness. It also studies the continuously changing scene of different aspects of surrogate advertising.*

**Keywords:** Surrogate Advertising, Legislative Measures, Advertising Standard Council of India (ASCI) code.

## INTRODUCTION

The literal meaning of 'Surrogate advertising' is duplicating the brand image of one product extensively to promote another product of the same brand. Surrogate advertising is done when the original product is not allowed to advertise itself on mass media. In India, alcohol brands are not allowed to give advertisements on television, so alcohol marketing firms use surrogate products like mineral water, soda, juice to hit consumers with the brand name. The brand name of the alcohol product is the same as the surrogate product.

Indian laws do not allow alcohol and alcohol companies to advertise, but a few of these advertisers have extended their brands to other categories purely in an attempt to advertise.

Surrogate advertising happens when the brand extension is seen as a guide for a product that is almost non-existent in commercial terms.

Product advertising for liquor and cigarette companies is banned in the country since 1995 by Cable Television Network (Regulation) Act. This ban is now likely to be extended to advertising of extended brands. The very purpose of banning liquor advertisement is defeated by surrogated advertising.

In India, the trend of surrogate advertising gathered momentum with the Cable TV Network Regulation Act, which prohibits alcohol and liquor advertisement on TV channels. Due to the ban, liquor companies focused more on promotions for brand building. The ban on advertising of alcohol beverage products has severely

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handicapped communication with consumers.

Companies with liquor brand are not advertising liquor product; instead they have extended the equity of their brand into other fields. However as the TV was the most effective medium of advertising, surrogate advertising on TV became popular. In the mean time, some producers entered new segments under the liquor brand or advertised these products under liquor brand.

The surrogate advertisements from liquor companies intensified further through sponsorship advertisements from liquor companies intensified further attracting youth. In late 2001, the broadcasters began arising socially responsible advertisement sponsored by liquor companies. By early 2002, surrogate advertisements of liquor brands had intensified like never before on satellite TV channels.

Advertisements have a strong influence in our life. We like them because they provide information and create awareness about the market. Our decisions whether to buy a product or not, is often completely influenced by the promotional activities of the companies concerned. Therefore, due to the widespread adverse impact that advertisements of unhealthy products like alcohol, liquor can cause, Indian government has always endeavored to curb or at least restrict rampant advertisements of such products by appropriate legislations, orders and directives.

Product advertising for liquor and cigarette companies is banned in the country since 1995 by Cable Television Network (Regulation) Act. According to rule 7(2) of the act, no broadcaster is permission to show advertisement which promotes directly and indirectly promotion, sale or consumption of cigarettes, alcohol products, wine, alcohol and liquor or other intoxicants, infant milk substitution, feeding bottle or infant food. This ban is now likely to be extended to advertising of extended brands.

The best example of this can be cited in a petition filed in 1999 before the High court of Delhi by the Voluntary Health Association of India, where a ban was sought on the sponsorship

of the Indian cricket team by wills brand of cigarettes manufactured by ITC. The appearance of the Wills logo on the sports apparel worn by the cricketers facilitated the repeated telecasting of that logo to millions of viewers. During the pendency of this petition, ITC voluntarily withdrew its sponsorship of the Indian cricket team in 2001 citing the reason that it did not want to derail the genuine efforts of the government and that it did not want to take undue advantage of its position in the Indian economy.

Nearly 50 percent of the television owners have access to cable channels and the numbers of channels are increasing day by day. So there is no doubt that the hidden call for alcohol consumption behind the surrogate's advertisements is not escaping the eyes of viewers in the world's fourth highest liquor-consuming country. The very purpose of banning liquor advertisements is defeated by surrogate advertising. The list of some examples are given:

#### **SURROGATE ADVERTISING IN INDIA**

Tobacco and liquor are the main reference point in the context of surrogate advertisement. Actually there is explicit ban on these products advertisement as they are considered to be products that put adverse affect on the mind of the consumers and motivate them to use that have an addictive effect and create discomfort for members of the general public. In India the situation started turning bad since 1975 when the government came out with the Cigarettes (Regulation of Production, Supply and Distribution) Act which made it mandatory to display a statutory health warning on all packages and advertisements of cigarettes.

The tobacco and liquor industry used various media to promote and push their product among selected audiences by sponsoring sports and cultural events such as international cricket, television programmes, and advertisements in newspapers, magazines, transport vehicles, etc. The tobacco and liquor industry in India is increasingly investing in and extensively advertising on- tobacco products by the same

**Table 1- List of product categories, brands and their surrogate advertisements**

Product Category	Brands	Surrogate Advertising
Tobacco	Rajnigandha	Kesar Pan Masala
	Goa Gutakha	Pan Masala
	Pan Parag	Pan Masala
	Manikchand	Film fare Awards
Cigarettes           Alcohol Beverages	Red & white Cigarettes	bravery award ceremony
	Gold Flake	Tennis Tournaments
	Wills Lifestyle	India Fashion Week, Lifestyle (textiles) showrooms
	Charms	Audiocassettes and CDs
	Four square white	water rafting& Gliding
	Seagram's	Music
	McDowells	Water and Soda
	Bagpiper	Water, Soda, and Music - cassettes & CDs
	Bacardi	Music
	Kingfisher	Mineral Water and Calendars
	Imperial Blue	Cassettes & CDs
	Smirnoff Vodka	Fruit Juices

brand name. Attractive schemes such as bravery awards, film fare awards have also been conducted by several tobacco companies, indirectly promoting their products.

India has taken ample measures to implement the advertising ban effectively. However, the ban on indirect advertisements of tobacco products has suffered a serious setback due to legal challenges and inadequate enforcement. Cigarette companies are engaged in using surrogate advertising and brand stretching. They are sponsoring and contributing to organize events such as fashion shows, music and bravery awards etc. through which they are trying to be socially acceptable. Their only objective is to compensate the losses arising out of the ban on

advertisements of one particular product (i.e. liquor). The companies can always claim that the order is being implemented and advertisements of liquor are banned, but the objective of the Government behind imposing the ban is not fulfilled.

The banning of surrogate advertisements has become a very controversial and sensitive issue. The producer companies feel that while the government allows them to do business on the one hand and taxes a huge chunk of their profits and takes it as its revenue, it does not allow them to conduct their business in a profitable manner on the other hand by banning one of their most important weapon of increasing sales 'advertisement'.

## LEGISLATIVE MEASURES FOR SURROGATE ADVERTISING IN INDIA

### 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. From a general look at the advertisement scene it appears that direct advertising is not carried out by the tobacco companies. However, the new trend appears to be that the names of tobacco products are used to promote other products which are in no way related to tobacco, and this may be termed as surrogate advertising. In order to bring it out of the purview of violation of this legislation and its rules, the brand name is withdrawn from the tobacco packets and is exclusively used in unrelated products. But then the point to be considered here is that the brand name so being used will be etched in the memory of the common man as a brand of tobacco earlier available in the market and produced by a certain company.

Sub-paragraph (i), (ii), (iii) and (iv) of Rule 2 of COPTA Rules, clearly sets 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, the surrogate advertising carried out by tobacco companies would constitute a form of indirect advertisement and would consequently be prohibited under section 5.

### 2. The Cable Television Networks (Regulation) Act, 1995 ("CTNA"):

The CTNA was enacted to regulate the operation of cable television networks in India. Rule 7 (1) of the Cable Television Network Rules, 1994 (the "CTN Rules"), enacted under the provisions of section 22, provides that, "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".

Rule 7(2)(viii)(a) provides 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"

### 3. The Advertising Standards Council of India ("ASCI") Code:

The ASCI is a voluntary self-regulation council, which has drawn up a Code of Conduct to control the content of advertisements with a view to achieve fair advertising practices. The Code applies to all forms of advertisement, that is, to newspapers, magazines, television, radio, cinema and posters, amongst others. Clause 6 of the Code provides that advertisement of products for which advertising has been restricted should not circumvent the restriction by purporting to be advertisements for other products, the advertising for which is not prohibited. This Clause also lays down the criteria for deciding whether an advertisement is indirect Advertisement.

### 4. Framework Convention on Tobacco Control (FCTC):

India ratified the Convention on 5th Feb. 2004 and the Convention came into force on 27th Feb. 2005. The convention seeks to protect present and future generations from devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures. Article 1. Definitions: "Tobacco Advertising and Promotion" means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly""Tobacco Sponsorship" means any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

Article 13 of the convention is titled as Tobacco advertising, promotion and sponsorship. This article recognizes the fact that a

comprehensive ban is necessary and imperative. The framework gives the parties the freedom to introduce a comprehensive legislation banning all tobacco advertising, promotion and sponsorship in accordance with the constitutional principles of the parties. The time limit granted to the members is 5 years from the date of the convention coming into force. For India the convention came into force on 5th Feb.2004. The parties are also encouraged to go beyond the convention obligations and implement appropriate measures for achieving the objective.

### CONCLUSIONS

Surrogate advertisements have their own Pros and Cons. Big and established players are just taking surrogate advertisement as boon for their higher brand recall value. They are pushing their products through various mediums. In recent years, Indian Premier League has proved to be great platform for the promotion of these big players.

Due to spreading relevance of social media, marketers choose a new way to promote their brand through Facebook, Twitter etc. As far as social media is concerned, these areas are yet to be covered.

The banning of the surrogate advertisements have become the most complex and controversial issues and has been regarded as one of the "Proxy Wars". Pros & Cons of surrogate advertising are just like a two sides of a coin. The trend followed by such ads could prove to be boon for big and established players as they result in higher brand recall value, thereby helping them to push their banned products further. At the same time, smaller companies and new entrants would find it difficult to establish themselves in the changed scenario.

Though this upcoming trend is not healthy for the young consumers & others in the interest of the health of the community; Surrogate ads have proved themselves a strapping & successful marketing strategy for the forbidden goods today. Surrogate advertisements are not only misleading, but also false and dishonest in many cases. If the legislature and the government really wants to get a grip on such menaces, it should implement its intentions in a more spirited manner and it should be done without the customary loopholes.

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