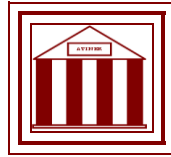


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**Surrogate Advertising in India:
Concept and Regulatory Measures**

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Surrogate Advertising in India: Concept and Regulatory Measures

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Abstract

Advertising has often been criticized for causing economic harms and for promoting such products to people which undermine their health. Considering the harmful effects of some such products, the Government of India banned the advertising of liquor and tobacco products by introducing various laws and regulations. As a reaction to this, liquor and tobacco manufacturers started seeking other ways of advertising their products. These manufacturers introduced various other products like sodas, fruit juices, cassettes and CDs in the market with the same brand name (as that of the liquor and tobacco brands) and also started undertaking sponsorship of various events. When such substitute products (surrogates) are advertised, it keeps reminding the customers about the liquor and tobacco products with the same brand name, the advertisement of which is banned. This phenomenon, known as "surrogate advertising", can be defined as duplicating the brand image of one product extensively to promote another product of the same brand. Surrogate Advertising can also be defined as the strategy used by manufacturers and advertisers to promote a product in guise of another, when the advertisement of former is banned by the law of the land. The phenomenon of surrogate advertising is of an ethical and legal concern in advertising.

The practice of surrogate advertising has been used extensively by liquor and tobacco industry in India. The practice needs to be checked if the ban on liquor and tobacco products needs to be implemented in real sense in India. The paper discusses the meaning of surrogate advertising, the use of surrogate advertising in Indian liquor and tobacco industry, laws regulating the same, cases of surrogate advertising in India and measures to be taken for controlling the same.

Keywords: Surrogate Advertising, India, Liquor and Tobacco Industry, Legislations, Cases, Measures

Introduction

Advertising has often been criticized for promoting such products to people which undermine their health and for causing economic harm. Considering the harmful effects of some products, the Government of India banned the advertising of liquor and tobacco products by introducing certain laws and regulations. As a reaction to this, liquor and tobacco manufacturers started seeking other ways of endorsing their products. They found an alternative way of advertising through which they can keep on reminding the consumers about their liquor and tobacco brands. They have introduced various other products (through brand extensions) in the market with the same or similar brand name. When these products (called surrogate products) are advertised, it keeps reminding the customers about the liquor and tobacco products with that brand name, the advertisement of which is banned. This phenomenon, known as “surrogate advertising”, has become a common practice in Indian advertising.

Meaning of Surrogate Advertising

When the laws of a country do not permit advertising of certain products, the advertisers devise new means of advertising. Such situation was witnessed when the Government of India banned the advertising of tobacco and liquor products in the country. The manufacturers of tobacco and liquor products introduced various other products, such as sodas, fruit juices, cassettes and CDs in the market with the same brand name and also sponsored various events and festivals. When such substitute products (surrogates) are advertised, it keeps reminding the customers about the liquor and tobacco products with the same brand name, the advertisement of which is banned. This phenomenon, known as ‘surrogate advertising’, can be defined as duplicating the brand image of one product extensively to promote another product of the same brand.

Surrogate advertising can also be defined as the strategy used by manufacturers and advertisers to promote a product in the guise of another, when the advertisement of the former is banned by the law of the land. The practice of surrogate advertising has ethical and legal dimensions.

Genesis of Surrogate Advertising

Surrogate advertisements took off, not long ago, in the UK, where the British housewives protested strongly against liquor advertisements "luring" away their husbands. The liquor industry found a way around the ban: Surrogate advertisements for cocktail mixers, fruit juices and soda water using the brand names of the popular liquors.

In India, surrogate advertisements gathered momentum with the amendment to the Cable Television Networks Regulation Rules, 1994 in the year 2000, which prohibits tobacco and liquor advertisements on TV channels.

The Advertising Code, given in Rule 7 (2) (viii) of the Cable Television Networks Rules, 1994, as amended in the year 2000, provides that

No advertisement shall be permitted which promotes directly or indirectly the production, sale or consumption of-

- (a) cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants;
- (b) infant milk substitutes, feeding bottle or infant food.

It was this ban on advertising of liquor and tobacco products that led to the ingenuity of the advertisers who came up with 'surrogate advertising' as a solution to the ban imposed on advertising of liquor and tobacco products.

Prevalence before the Ban

Direct advertising of liquor and tobacco products was rampant before the enforcement of the Cable Television Networks Regulation Rules as amended in the year 2000. Sponsorship of sports events and cultural events by tobacco companies were methods of promoting tobacco brand names. 'Wills' (a brand of Indian Tobacco Company - ITC) used to sponsor Indian cricket team and cricket matches. 'Manikchand', manufacturers of 'gutkha' (chewing tobacco), patronized the Filmfare awards ceremony. In March 1997, ITC paid US\$ 16 million to put its logo on the Indian cricket teams' uniforms. In December 1999, the Four Square brand of GPI ran the 'Gold in Gold' contest, offering gold gift options, which required that entrants to the contest, besides being tobacco users, collect 4 inserts from Four Square Gold cigarette packs. These contests and offers were advertised to entice existing customers and recruit new ones to use their harmful product.

In the absence of any legislative measures to ban advertising and promotion of liquor and tobacco products, it was not easy to control the advertising and promotional activities of companies manufacturing liquor and tobacco products. With the Indian government banning the advertising of tobacco and liquor products in the country, it became possible to hold any manufacturer responsible for promoting any such product. However, the ban led to another problem, which the liquor and tobacco industry has witnessed in the last few years, the problem of surrogate advertising.

Situation faced after the Ban

Surrogate Advertisements by Liquor Companies

The liquor industry is a prominent player in the area of surrogate advertising. Surrogate advertisements used by liquor companies include

'Bagpiper' soda, cassettes and CDs, 'Hayward's' soda, 'Royal Challenge' golf accessories and mineral water, 'Kingfisher' mineral water, 'White Mischief' holidays, 'Smirnoff' cassettes and CDs, 'Imperial Blue' cassettes and CDs, and 'Teacher's' achievement awards. These products bear exactly the same brand name and logo, which they used earlier in their liquor advertisements. It was surprising to know that liquor giants, like McDowell's and Seagram's, had entered into new segments, like cassettes and CDs, and mineral water. Later, it was found that the basic aim of such surrogate advertisements was to promote their liquor products, like beer, wine and vodka. Their brand extensions were just an eyewash to bypass the advertisement ban. Currently, after the amendments made to various laws and the guidelines and measures adopted by the Advertising Standard Council of India (after 2009), the practice of surrogate advertising in liquor industry is being controlled effectively.

Surrogate Advertisements by Tobacco Companies

The tobacco industry was no far behind in exhibiting its ingenuity to ward off the ban on advertising tobacco products. One could see a trend of surrogate advertisements by companies making tobacco products (like cigarettes) after the ban on advertising of tobacco products. Examples of surrogate advertisements in this category included 'Red and White' Bravery Awards, 'Manikchand' Filmfare Awards, and Four Square' white water rafting.

Tobacco companies in India were increasingly investing in non-tobacco products by the same brand name (as that of the tobacco product) and were aggressively advertising these products through all available media after the ban. Gutka brands, such as 'Rajnigandha', 'Goa 1000' and 'Pan Parag' resorted to surrogate advertising for paan masala (a non-tobacco product, the advertisement of which was allowed) bearing the same brand name. A plethora of advertisements on paan masala mushroomed on media channels. Companies advertise paan masala, bearing the same brand name as other tobacco products and highlighting that paan masala is a non-tobacco product. However, the Supreme Court on 23 July, 2013 banned surrogate advertisement of tobacco products, and this has controlled the practice in the tobacco industry to a great extent.

Legislative Measures Controlling Surrogate Advertising in India

Surrogate advertisements are not only misleading, but also false and dishonest in many cases. With surrogate advertising so widespread, let us see how various legislative measures in India are intended to control it.

The Cable Television Networks Regulation Rules, 1994 {amended in 2000, 2003 and 2009, framed under the Cable Television Networks (Regulation) Act, 1995}

In India, surrogate advertisements gathered momentum with the amendment to the Cable Television Networks Regulation Rules in 2000, which prohibited tobacco and liquor advertisements on television.

The Advertising Code specified under Rule 7 (2) (viii) of Cable Television Networks Regulation Rules as amended in 2000 prohibits advertisements which promote, directly or indirectly production, sale or consumption of

- a. cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants;
- b. infant milk substitutes, feeding bottle or infant food.

As said earlier, it was this ban on advertising of liquor and tobacco products that led to the ingenuity of the advertisers who came up with 'surrogate advertising' as a solution to the ban imposed on advertising of liquor and tobacco products, and with time, India witnessed an increasing number of cases of surrogate advertising. Thus, the ban on liquor and tobacco advertising was not achieved in true sense as the surrogate products were constantly reminding the people of the liquor and tobacco brands.

To tackle with this problem, the Cable Television Networks Rules, 1994, were amended in the year 2009, and the following changes were made in rule 7, sub rule (2), clause (viii).

No advertisement shall be permitted which promotes directly or indirectly production, sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants; 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 service subject to the following conditions that:

- i. 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;
- ii. the advertisement must not make any direct or indirect reference to the prohibited products;
- iii. the advertisement must not contain any nuances or phrases promoting prohibited products;
- iv. the advertisement must not use particular colors and layout or presentations associated with prohibited products;
- v. the advertisement must not use situations typical for promotion of prohibited products when advertising the other products;

Provided further that

- i. the advertiser shall submit an application with a copy of the proposed advertisement along with a certificate by a registered Chartered Accountant that the product carrying the same name as cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants is distributed in reasonable quantity and is available in

substantial number of outlets where other products of the same category are available and the proposed expenditure on such advertising thereon shall not be disproportionate to the actual sales turnover of the product.

- ii. All such advertisements found to be genuine brand extensions by the Ministry of Information and Broadcasting shall be previewed and certified by the Central Board of Film Certification as suitable for unrestricted public exhibition and are in accordance with the provisions contained in sub-clause (i) to (v) of the first proviso, prior to their telecast or transmission or retransmission.

Thus, unless and until the liquor manufacturers and tobacco brands have a substantial business of the surrogate products, they would not be able to advertise the same. Thus, there was a reduction in the number of surrogate advertising cases noticed after this amendment in 2009.

The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003

This Act seeks to ensure that effective protection is provided to non-smokers from involuntary exposure to tobacco smoke and to protect children and young people from being addicted to the use of tobacco.

Section 3(a) of the Act defines 'advertisement' as 'any visible representation by way of notice, circular, label, wrapper or other document, and includes any announcement made orally or by any means of producing or transmitting light, sound, smoke, or gas'.

Thus, surrogate advertisements clearly fall within the definition, as it involves making the tobacco labels clearly visible to people through other products by the same name. Moreover the public is always reminded orally of the tobacco's brand name through the advertisements of such other products. So such advertisements are liable to be a subject matter of this Act and, therefore, subject to its regulatory measures.

Section 5 of the Act lays down the following points with regard to the Prohibition of Advertisement, Promotion and Sponsorship of all Tobacco Products.

- Both direct & indirect advertisement of tobacco products is prohibited in all forms of audio, visual and print media
- Total ban on sponsoring of any sport and cultural events by cigarette and other tobacco product companies
- No trade mark or brand name of cigarettes or any tobacco product to be promoted in exchange for sponsorship, gift, prize or scholarship
- No person, under contract or otherwise, to promote or agree to promote any tobacco product.

Certain amendments were made in the above Act in 2005, clarifying that the word 'indirect advertisement' mentioned in Section 5(1), would mean:

1. The use of a name or brand of tobacco products for marketing, promotion or advertising other goods, services and events;
2. The marketing of tobacco products with the aid of a brand name or trademark which is known as, or in use as, a name or brand for other goods and service;
3. The use of particular colors and layout and/or presentation which are associated with particular tobacco products; and
4. The use of tobacco products and smoking situations when advertising other goods and services.

Thus, this section not only restricts advertisement and promotion of tobacco products for direct/ indirect pecuniary benefit, but also covers promoting tobacco through brand extensions and sponsorships.

Advertising Standard Council of India (ASCI) Code

The ASCI is a voluntary self-regulation council, registered as a not-for-profit company, under section 25 of the Companies Act, 1956. It is formed to safeguard against the indiscriminate use of advertising for the promotion of products which are regarded as hazardous to society or to individuals to a degree or of a type which is unacceptable to society at large. The responsibility for the observance of this Code for Self-Regulation in Advertising lies with all who commission, create, place or publish any advertisement or assist in the creation or publishing of any advertisement. All advertisers, advertising agencies and media are expected not to commission, create, place or publish any advertisement which is in contravention of this Code.

Chapter III.6 of the ASCI Code provides that advertisements for products whose advertising is prohibited or restricted by law or by this Code. In judging whether or not any particular advertisement is an indirect advertisement for product whose advertising is restricted or prohibited, due attention shall be paid to the following:

- a) Visual content of the advertisement must depict only the product being advertised and not the prohibited or restricted product in any form or manner.
- b) The advertisement must not make any direct or indirect reference to the prohibited or restricted products.
- c) The advertisement must not create any nuances or phrases promoting prohibited products.
- d) The advertisement must not use particular colors and layout or presentations associated with prohibited or restricted products.
- e) The advertisement must not use situations typical for promotion of prohibited or restricted products when advertising the other products.

Thus, the ASCI's Code on advertising specifically prohibits surrogate advertising.

The ASCI's role in regulating advertising in India has been appreciated by various agencies, including the Government. However, ASI code lacked the force of legal recognition. The Government of India, at last, took note of this and by one stroke, on 2nd August 2006, vide a notification in the Gazette of India Extraordinary {Part II –sec. 3(i)}, made sure that at least as far as TV commercials are concerned, they abide by the ASCI Code. The amendment made in the Cable Television Networks (Amendment) Rules, 2006, now provides:

"(9) No advertisement which violates the Code for Self-Regulation in Advertising, as adopted by the Advertising Standards Council of India (ASCI), Mumbai, for public exhibition in India, from time to time, shall be carried in the cable service".

Later, in order to evaluate genuineness of a unrestricted product or service brand extension of a product (like liquor and tobacco) whose advertising is prohibited by law, the Advertising Standards Council of India (ASCI) decided the following objective criteria to be used to qualify a correct brand extension product or service

- Brand Extension Product or Service should be registered with appropriate Government authority.
- In store availability of the product must be at least 10% of the leading brand in category the product competes as measured in the Metro Cities where the product is advertised.
- Sales Turnover of the product or Service should exceed Rs.5 crore (Rs. 50 million) per annum nationally or Rs 1 crore (Rs. 10 million) per annum per state where distribution has been established.
- A valid certificate from independent organization such as ACNielsen or category specific industry association (for distribution and sales turnover) would be required to prove the concerned criteria.

From these guidelines, it becomes apparent that a brand extension needs to have a reasonably good sales turnover to qualify as a good brand extension rather than being categorized as a surrogate product. So, even if the surrogate products are launched for merely reminding the consumers about the respective liquor/tobacco brands, the companies will have to increase their business in the new categories (like packaged water, sodas, music CDs, golf accessories, etc) . In an attempt to do that, there is a hope the business of surrogates itself will become so large that people will stop relating these brands to the liquor and tobacco products that they produce.

Framework Convention on Tobacco Control (Fctc) by who

FCTC is a convention developed by the World Health Organization (WHO) as a model code of conduct to be adopted by any country desirous of enforcing strict anti-tobacco rules.

Article 13 of the convention deals with tobacco advertising, promotion and sponsorship. It provides that even if the constitution doesn't permit a comprehensive ban on tobacco advertising, it can resort to other ways too, which include:

1. Prohibiting advertisements which create an erroneous impression on consumers,
2. Restrict use of direct/indirect incentives encouraging public use of tobacco,
3. Restrict media advertising in a period, and
4. Restrict tobacco sponsorships of public events.

India being one of the signatories to the FCTC should follow the detailed guidelines for surrogate advertising given in the convention. For instance, it has been suggested that effective monitoring, enforcement and sanctions supported and facilitated by strong public education and community awareness programs are essential for implementation of a comprehensive ban on tobacco advertising, promotion and sponsorship. It is also important to note here that as far as the number of cases of surrogate advertising of tobacco brands is concerned, India has seen a sharp decline in this number in the recent years. This is also due to a separate act (The Cigarette and Other tobacco Products Act, 2003) dealing with advertising of tobacco products in India. Moreover, the Supreme Court on 23 July, 2013 banned surrogate advertisement of tobacco products as it violates Article 13 of WHO's Framework Convention on Tobacco Control (FCTC) and the provisions of The Cigarette and Other tobacco Products Act, 2003. This has further controlled the practice in the tobacco industry.

Some Cases of Surrogate Advertising in India

ASCI's complaint cell, Consumer Complaints Council (CCC), has played a fair and supportive role in ensuring that the complaints received against surrogate advertisements are dealt with promptly. Some of the cases (2006-2013), where the complaints received against surrogate advertisements were upheld by CCC, are discussed below.

The Kingfisher Premium Packaged Drinking Water Case

This ad was published in The Week on 31st Dec, 2006. The headline of the ad read: "Where the Night Rocks". "Packaged Drinking Water" was written in fine print. The visual depicted "a dancing couple". The ad also had visual

depiction of brand name of a liquor, 'Kingfisher Premium'. According to the complaint, in the absence of specific information, the advertisement appeared to be a surrogate advertisement for a liquor brand, 'Kingfisher Premium'. The CCC observed in April 2007 that the visual and the headline of the ad did not bear any relevance to the product advertised, Kingfisher Premium, the packaged drinking water and it appeared to be a surrogate advertisement for 'Kingfisher Premium'. The ad was withdrawn.

The Johnnie Walker Blue Label Whisky Case

This ad was published in Business India (November 2008 issue). It showed a whisky glass inscribed with the words "Johnnie Walker Blue Label Blended Scotch Whisky". The ad read: "Whiskies so rare that some of the distilleries no longer exist. The master blender at Johnnie Walker & Sons can detect a single part of flavor in a billion, a skill and craft that is exceptionally rare", "Only about one in ten thousand are considered to possess the exceptional flavors and properties sought for Johnnie Walker Blue Label", "These last precious drops can truly never be replaced". The complaint was received in January 2009 stating that the ad appeared to be a surrogate ad for a liquor brand- 'Johnnie Walker Blue Label Whisky'. The CCC decided in February 2009 that the ad amounted to a surrogate advertisement. Business India gave an undertaking not to publish the said promotion again.

The Smirnoff Case

This ad was published in India Today (November 2008 issue). It read: "What is celebration without a little flavor in it?" The complaint against the ad (March 2009) argued that the ad is compelled the consumer to consume alcohol at home on festive occasions (the ad was published in November which is Diwali-an Indian Festival- time in India). Moreover, the ad did not mention that 'Smirnoff' was an alcohol drink, and that alcohol was injurious to health. The ad also did not carry the warning "Not for minors". The CCC held in March 2009 that the ad was a surrogate ad for a liquor product, 'Smirnoff'. The media, India Today, undertook not to publish the ad in future.

The Royal Mist Case

The ad published in the Times of India (Feb 2007) read: "Royal Mist-100% Premium Grain", "Enchantingly Smooth", "Misty Nights" (in fine print). It was complained that the ad could mislead consumers regarding the product advertised for sale. Visual depiction of brand name was suggestive of a well-known brand of liquor product, 'Royal Mist'. In the absence of specific information, the ad appeared to be a surrogate ad for the liquor brand. The CCC observed that the visuals depicted and the copy mentioned did not refer specifically to a product or service being promoted. The slogan "Cast a Spell", and the bylines, "100% premium grain", and "Enchantingly Smooth", refer to features generally associated with a liquor brand. The ad appeared to be a surrogate ad for a liquor brand, 'Royal Mist'. The ad was withdrawn. The advertisers modified the ad and the modified version of Royal Mist ad was

published again in the Times of India, in June 2007, against which again a complaint was received.

The ad headline stated “100% premium grain means 100% smoothness”. The copy mentioned “World over, premium, wholesome grains stand for quality of the highest order. In the same tradition, Royal Mist has been uniquely crafted and made from 100% pure, premium grains-Perfected for you to derive maximum satisfaction out of every moment”. The visual had shown grains in a tumbler. In the second complaint, visual depiction of brand name was suggestive of a well-known brand of liquor product, ‘Royal Mist’. The advertisement was claimed to be a surrogate advertisement for the liquor. The CCC found the advertisement to be a surrogate advertisement for the liquor.

The advertiser assured the CCC to make appropriate modification in the ad before any future release. The case, however, points out how the advertisers are able to remind the customers about their liquor brands time and again by simply withdrawing one ad and coming up with another, defeating the whole purpose of the ban on liquor and tobacco products.

Seagram’s Royal Stag Mega Cricket Case

In a complaint filed with ASCI in December 2012, it was argued that the brand (Seagram) did not have a tangible brand extension (Royal Stag Mega Cricket). The CCC concluded that in the absence of data by an independent research company of the number of products distributed in the market place, the product cannot be considered a genuine brand extension. Royal Stag Mega Cricket is therefore considered a surrogate product. The decision was upheld by the ASCI as it contravened the Brand Extension Guidelines as mentioned in Chapter III.6 of the Code.

Initiatives Taken by the Ascii and Mib

It appears that the ASCI is very prompt in solving the cases of surrogate advertising. However, by the time the unethical or improper advertisement appears and a complaint is filed against it, there is a lapse of time. By the time the CCC receives the complaint, processes it and issues order to the advertiser, the advertising agency, and the media, further time is lost. Moreover, by the time the advertiser agrees to withdraw or modify the ad, the damage is already done. The advertiser is already able to remind the customers about his liquor and tobacco brands. Thus, there is a need to frame stricter laws and impose heavy penalty on companies and advertising agencies

Keeping this in mind, the Advertising Standards Council of India (ASCI) has announced three significant initiatives to ensure faster and stringent action against all advertisements that violate its advertising code and guidelines. ASCI, through National Advertising Monitoring Service (NAMS), has now started tracking advertisements in print and TV nationally against which complaints are upheld. On an average, 1,500 TV and 45,000 newspaper ads are monitored monthly. If after persistent reminders, certain ads are not altered and

are still being aired in the same manner, then the ASCI reports this to the relevant statutory authorities for action. As a result of adopting the National Advertising Monitoring Service (NAMS), the number of reported cases of misleading advertising and surrogate advertising has seen a significant increase. Thus, the surrogate ads which were earlier going unnoticed are also being controlled by the ASCI. The ASCI bagged the Best Practices Silver Award (2013) for establishing this National Advertising Monitoring Service on the print and TV ads. The award was given at the European Advertising Standards Alliances (EASA)¹ annual meeting held in Milan, Italy.

Further, to speed up the decision making process and handle multi-fold increase in complaints due to NAMS, ASCI has introduced an additional Consumer Complaint Council (CCC). As a result, CCC meetings will now be held every week instead of every fortnight. This will further reduce the average complaint adjudication time.

Since 15 March 2013, ASCI has also initiated Suspension Pending Investigation (SPI) process by which ASCI can ask an advertiser to suspend an advertisement, pending final decision by the CCC, if prima facie it is seen to cause immense harm or hurt to consumers and society in general.

The Ministry of Information and Broadcasting (MIB) also in a directive issued to all channels, including the news and current affairs channels in June, 2010, directed the broadcasting channels to "withdraw all such advertisements else broadcast license will be suspended or cancelled". The ministry said that it had observed violations of cable laws pertaining to the telecast of such advertisements. The ministry also directed the companies to withdraw all such advertisements or else face stringent action, including suspension or prohibition of broadcast.

Challenges Ahead

With the growing restrictions on advertising of tobacco and liquor products, the marketers see the digital media as a great tool to exploit as for now. Online platforms not only provide brands an engagement platform, but also allow them to create brand loyalty. Experts believe that digital liquor branding can be as potent as physical liquor branding, as it allows direct interaction with the audience.

Although there have been controversies regarding the promotion of alcohol brands through social media, no specific regulations have been set as of now. Thus liquor brands can exploit platforms like Facebook and Twitter to promote their brands. Miller and Fosters, for example, have their respective Facebook and Twitter accounts in place, and often get involved in weekly contests and promotional activities.

¹The EASA Best Practice Award is presented each year to the self-regulatory organization that has most effectively implemented an element of the EASA Best Practice Model-a set of operational standards for advertising standards bodies.

In addition to the use of social media by manufacturers of liquor and tobacco products, another area of concern is sponsorship of events by these companies. From cricket and golfing championships to award shows and music festivals, alcohol brands seem to be gunning more for high-profile events. Apart from high viewership and visibility on ground and on various media, these events provide perfect synergies for promotion online. Kingfisher Premium has associated itself with five teams of the IPL as the 'Good Times Partner', resulting in huge brand awareness among its target audience. Similarly, Royal Stag has associated itself with Mirchi Music Awards, a popular award show which recognizes the best bollywood music, albums, song of the year, through listeners' choice and online voting.

With the manufacturers of liquor and tobacco products resorting to such practices, the ban on advertising of such products would not achieve the real purpose that it intended to achieve. This is an area of serious concern and requires specific regulations for sponsorships and use of digital media.

Measures Suggested for Curbing Surrogate Advertising

1. All direct and indirect forms of tobacco advertising, promotion and sponsorship should be expressly prohibited.
2. The law should clearly define the terms 'advertising', 'sponsorship' and 'promotion'.
3. Strict laws should be enacted to penalize the companies making use of surrogate advertisements for promotion of banned products. Substantial penalties should be imposed on those who circumvent the ban.
4. Strict action and heavy penalties should be imposed on the advertising agencies designing surrogate advertisements.
5. Commercial display of tobacco products should be banned to discourage and prevent point-of-sale advertising.
6. Brand name and logos of liquor and tobacco products should not be visible to people when such brands support sports and other popular events.
7. Consumer awareness should be created to help people understand the negative impact of surrogate advertisements. They should be encouraged to file complaints with the ASCI against surrogate advertisements of liquor and tobacco products.
8. The prohibition of surrogate advertisement should also include such advertisements and contests on the Social media and the Internet.

Conclusion

In India, the Cable Television Networks Rules, the Cigarettes and Other Tobacco Products Act and the ASCI's Code of advertising prohibit surrogate advertising by manufacturers of liquor and tobacco products. The decisions given by ASCI and the directions issued by the Ministry of Information and Broadcasting (MIB), and the Indian Broadcasting Foundation (IBF) have also aimed to put a check on the practice of surrogate advertising. However, advertising law and regulations were violated time and again by liquor and tobacco manufacturers to advertise their brand names to consumers. However, with the amendments made in the Cable Television Networks Rules in 2009 and the guidelines adopted by ASCI on deciding what will constitute a good brand extension, the practice of surrogate advertising has been controlled to a large extent. Also, with the setting up of the National Advertising Monitoring Service by ASCI, a lot more seems to be under control. But in order to curb this practice in true sense, the relevant laws should be more stringent and impose heavy penalties on the manufacturers of liquor and tobacco products who use surrogate advertisements for promoting their liquor and tobacco brands. Moreover, the advertising agencies designing surrogate ads should be dealt with strictly. Separate regulations are required for sponsorships of events by tobacco and liquor companies. Also, the advertisements and contests held by these companies on social media need to be controlled. Without stricter laws and imposition of penalty, the very purpose of regulatory measures banning liquor and tobacco advertising would not achieve their objectives.

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