

CONTENT MARKETING AND IP: LEVERAGING INTELLECTUAL PROPERTY FOR BRANDING

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Abstract

In the realm of modern business, the marriage between Content Marketing and Intellectual Property (IP) has emerged as a dynamic force, driving brand strategies, consumer psychology, and competitive landscapes. This paper delves into the symbiotic relationship between Content Marketing and IP, exploring how businesses leverage intellectual property assets to create powerful branding strategies that resonate with consumers on emotional and cognitive levels. Additionally, it investigates recent legal cases, such as Emami Limited v Dabur India Limited, to analyze the complexities and implications of IP-related disputes in the context of branding. The convergence of Content Marketing and IP brings forth innovative approaches to branding. Businesses' strategies cover various forms of IP, including trademarks, copyrights, patents, and trade secrets, to build unique brand identities. This often involves crafting compelling narratives that tap into consumers' emotions and experiences. By employing visual, auditory, and textual content, brands create immersive storytelling that establishes a connection with their target audience. Effective branding strategies capitalize on consumer psychology, triggering emotional responses that influence purchasing decisions and foster brand loyalty. The case of Emami Limited v Dabur India Limited provides a pertinent example of how IP can become a focal point in branding battles. In this case, two renowned FMCG giants clashed highlighting the significance of safeguarding intellectual property assets and the intricate nuances of brand distinctiveness. This case underscores the importance of well-defined IP strategies and the role of legal frameworks in resolving disputes arising from branding conflicts. Despite the inherent value of legitimate IP utilization in branding, the darker side of this relationship

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involves the misuse of intellectual property assets for profit maximization. Some businesses resort to misrepresentations, exploiting the allure of famous personalities, societal values, and promises of quality to deceive consumers. Furthermore, such misuse underscores the need for stringent IP regulations and consumer education to ensure ethical branding practices. The involvement of famous personalities in branding further complicates the relationship between IP and content marketing. Celebrities often lend their images and identities to promote products and services, creating a symbiotic link between personal and brand identities. This, however, poses challenges in terms of authenticity, transparency, and ethical considerations. Businesses must navigate the fine line between leveraging celebrities' fame and maintaining brand integrity while adhering to IP rights and ethical standards. Societal values play a pivotal role in the success of branding efforts. Brands often align with specific values to establish a connection with consumers who share similar beliefs. However, this can also be exploited to manipulate consumers into making purchases under the cover of supporting certain causes. In conclusion, the intricate interplay between Content Marketing and Intellectual Property is a multifaceted arena that shapes modern branding strategies, influences consumer behaviours, and contributes to the competitive landscape. While legitimate use of IP assets empowers brands to resonate with consumers and foster loyalty, the misappropriation of IP for profit-driven deception underscores the need for vigilance and ethical considerations. This study sheds light on the complex dynamics of IP in branding, highlighting the role of legal frameworks, consumer psychology, societal values, and the evolving landscape of business ethics.

Keywords: *Content Marketing, Intellectual Property, branding strategies, consumer psychology, misuse of IP, famous personalities, societal values.*

The Symbiotic Relationship: Content Marketing and Intellectual Property

Leveraging IP in Branding Strategies

Content Marketing

Content marketing is a relatively new concept with various definitions. According to Mandloys Digital Agency (2013), the aim of content marketing is to educate consumers by providing valuable information. This strategy builds brand loyalty and encourages future purchases, typically without direct selling. Instead, the audience is subtly motivated to buy from the company when they are ready.

Copyblogger (2013) provides a broader perspective, suggesting that content marketing entails producing and distributing valuable, free content to draw in prospects, convert them into customers, and encourage repeat business. They emphasize the importance of offering free content to encourage access, consumption, and sharing. The content should be relevant to the business's field and category to educate the audience, fostering familiarity, trust, and a willingness to do business in the future. Social media effectively complements content marketing by increasing engagement and the potential for viral reach through native content on social networks. Businesses are increasingly adopting content marketing, as highlighted by Demand Metric (2013), due to four main reasons:

1. Changing buyer attitudes towards traditional media.
2. Ineffectiveness of traditional media in reaching customers compared to social media.
3. Reduced budgets and quality in traditional media, creating opportunities for businesses to publish their own content.
4. The future of marketing focuses on engagement and conversations with customers, facilitated by affordable technology.¹

¹ D. Le, "Content Marketing," Bachelor's thesis, DP in International Business, University of Applied Science, 11(2013).

WHY YOU NEED CONTENT MARKETING



*Keeps Reader
Attention*



*Improves
Brand Loyalty*



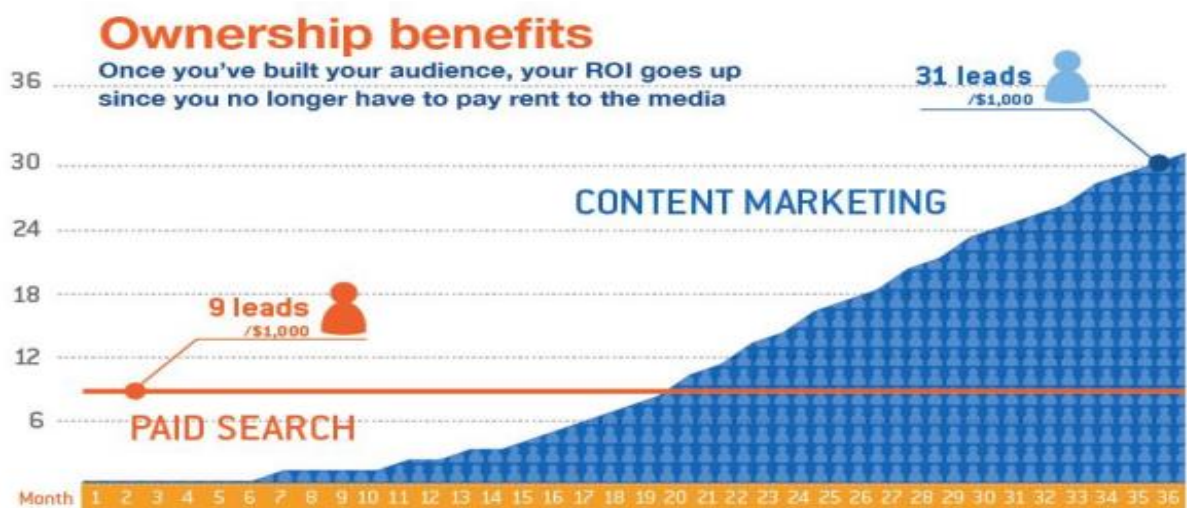
*Generates
Leads*



*Increases
Direct Sales*

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Reason	Description
1. Buyers seek informative and credible content	Consumers are looking for valuable information to make informed decisions.
2. Social media offers better buyer data than traditional media	Social platforms provide more detailed insights into consumer behavior and preferences.
3. Budget cuts in media companies open opportunities for businesses to publish content	Reduced spending in traditional media creates space for businesses to fill the content gap.
4. Traditional selling is becoming harder, while engagement-based marketing is gaining importance	Building relationships through engagement is more effective than traditional sales tactics.
5. Businesses can collect extensive customer data by becoming their own publishers	Owning the content platform allows for direct data collection on consumer interactions.
6. High-quality content from business experts is trusted	Consumers value expertise and credibility when making purchasing decisions.



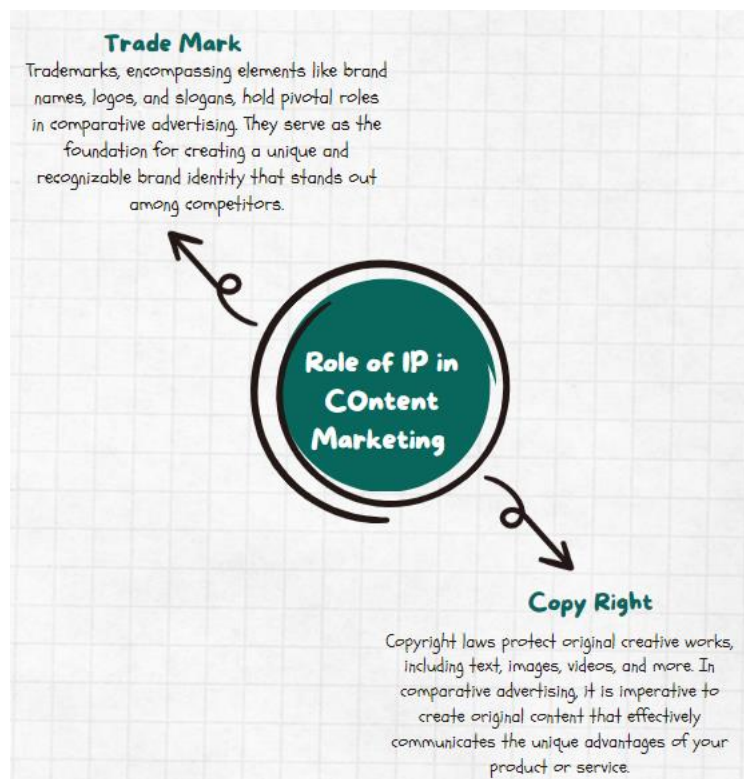
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Aristotle Onassis: "The secret of business is to know something that nobody else knows."

² Id

³ id

Leveraging Intellectual Property (IP) in content marketing strategies, especially in the context of comparative advertising, copyright, and trademarks, empowers businesses to create a distinctive and competitive brand identity. This approach focuses on the strategic use of IP to develop original and protected content, enhancing brand recognition and credibility. By ensuring legal compliance and adhering to ethical standards, businesses can effectively use content marketing to differentiate their brand while building trust and loyalty with their

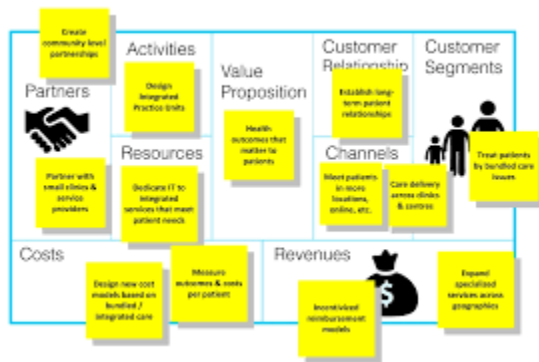


audience.

Leveraging IP in branding strategies within the realms of comparative advertising, copyright, and trademarks is a multifaceted approach. It entails the strategic use of trademarks and copyrighted content to build a distinct brand identity, protect brand integrity, and uphold ethical advertising standards. Businesses must strike a balance between promoting their brand's strengths and adhering to legal and ethical norms within the marketplace.⁵

⁴ Naina CHudasam , Reference Think, T. (2024, June 10). 5 Tips for Successful Content Marketing. Grand Canyon University. Retrieved June 2, 2024, from <https://www.gcu.edu/blog/business-management/5-tips-successful-content-marketing>

⁵ Minh Tuan, "Vietnam: Strategies To Leverage Intellectual Property For Business Development," Mondaq, August 4, 2023, <https://www.mondaq.com/vietnam/intellectual-property/1208236/strategies-to-leverage-intellectual-property-for-business-development>. (Last Visited on August 9-2023)



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Consumer Psychology and Emotional Brand Connections

In today's rapidly evolving business landscape, the concept of "brand experience" has gained significant attention. Companies, both in the e-commerce and brick-and-mortar sectors, are increasingly striving to establish emotional connections with their target audiences. This critical element of brand strategy is often underestimated but holds immense potential. So, what exactly is "brand experience," and how can a brand create a profound emotional connection with its customers? This research aims to unravel the intricate facets of brand experience by delving into the way people think, feel, and act in relation to brands.

Understanding Brand Perception:

Brand experience encompasses the thoughts, emotions, and responses that individuals associate with a brand, shaping their lasting impressions. It encompasses a holistic view that encompasses both physical and digital elements of a brand's ecosystem. This includes in-person and online store visits, packaging, promotional activities, communication strategies, social media engagement, service interactions, and the workplace environment.

Brand perception plays a pivotal role in shaping brand experience. Consumers subjectively assess a brand's perceived benefits, qualities, personality, and image. Their interaction with a brand and the use of its products or services reflect their self-perception. The extent to which a brand aligns with their sense of self is referred to as "self-congruity" or "congruence." Previous interactions significantly influence brand perception and consumer expectations regarding future brand performance.

⁶ Ramkumar Raja Chidambaram. "Benefits of leveraging an IP-Driven Business Model." LinkedIn, 29 Aug. 2018. <https://www.linkedin.com/pulse/benefits-leveraging-ip-driven-business-model-ram-kumar-mba-cfa->. (Last Visited on August 11-2023)

Numerous factors influence people's perceptions of a brand, including individual needs, motivations, emotions, communication strategies employed by the brand, and the presence of competitors offering similar products or services. Brands that engage with individuals in a more meaningful way have the potential to build more valuable relationships by enhancing emotional connections. When companies connect with customers on an emotional level, the benefits can be substantial. For instance, after a major bank launched a credit card aimed at Millennials to foster an emotional bond, usage among this group increased by 70%, and new accounts grew by 40%. Similarly, a leading household cleaner turned market share declines into double-digit growth within a year by focusing its products and messaging on emotional connection. Additionally, a national apparel retailer saw its same-store sales growth triple after adjusting its merchandising and customer experience to better align with its most emotionally engaged customer segments.

Recognizing the significant potential for creating value, companies should treat emotional connections as both a science and a strategic priority. However, many companies rely on guesswork rather than a systematic approach, leaving them uncertain about what truly works and whether their efforts are effective.

Hundreds of brands across various categories demonstrate that it is possible to accurately measure and strategically target the emotions that drive customer behaviour, which we term "emotional motivators." These motivators are more predictive of a customer's future value to a company than traditional metrics like brand awareness and customer satisfaction, representing a vital source of growth and profitability.

Any company can start by systematically identifying its customers' emotional motivators and experimenting with ways to leverage them, gradually scaling up these efforts. On a more advanced level, companies can invest in thorough research, and big data analytics, or partner with consultancies specializing in this area. Firms in industries such as financial services, retail, healthcare, and technology are now using insights into emotional connections to attract and retain their most valuable customers. The most advanced companies integrate emotional

connection into a comprehensive strategy that permeates every aspect of their operations, from product development and marketing to sales and customer service.⁷

High-Impact Motivators Numerous "emotional motivators" influence consumer behaviour. Listed below are 10 that have a substantial impact on customer value across all the categories examined.

I am inspired by a desire to:	Brands can leverage this motivator by helping customers:
Stand out from the crowd	Project a unique social identity; be seen as special
Have confidence in the future	Perceive the future as better than the past; have a positive mental picture of what's to come
Enjoy a sense of well-being	Feel that life measures up to expectations and that balance has been achieved; seek a stress-free state without conflicts or threats
Feel a sense of freedom	Act independently, without obligations or restrictions
Feel a sense of thrill	Experience visceral, overwhelming pleasure and excitement; participate in exciting, fun events
Feel a sense of belonging	Have an affiliation with people they relate to or aspire to be like; feel part of a group
Protect the environment	Sustain the belief that the environment is sacred; take action to improve their surroundings
Be the person I want to be	Fulfill a desire for ongoing self-improvement; live up to their ideal self-image
Feel secure	Believe that what they have today will be there tomorrow; pursue goals and dreams without worry
Succeed in life	Feel that they lead meaningful lives; find worth that goes beyond financial or socioeconomic measures

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The Brain's Signals in Shaping Brand Experience (consider rephrasing):

"People do not choose between experiences; they choose between memories of their experiences." This insight from Nobel laureate Daniel Kahneman underscores the power of a

⁷ S. Magids, A. Zorfas, and D. Leemon, "The New Science of Customer Emotions," Harvard Business Review, Nov. 2015. [Online]. Available: <https://hbr.org/2015/11/the-new-science-of-customer-emotions>. [Accessed: Mar. 23, 2024].

⁸ id

positive brand experience in leaving a lasting impression. Perception involves processing sensory information to make sense and derive meaning. Individuals draw upon prior knowledge stored in their long-term memory to interpret what they see and hear. This knowledge is critical in forming brand perceptions. Consequently, understanding the neurological processes during a positive brand experience is vital.

When individuals encounter a brand, their brains process it similarly to how they would process interactions with other people. Various brain regions handle visual, auditory, and emotional stimuli associated with the brand. For instance, advertising sounds, the scent of a workplace or retail setting, and the visual aesthetics of a brand's logo all contribute to forming a brand's perception. The brand's reputation and past experiences further influence decision-making processes within the prefrontal cortex.

The Significance of Emotional Connection in Business:

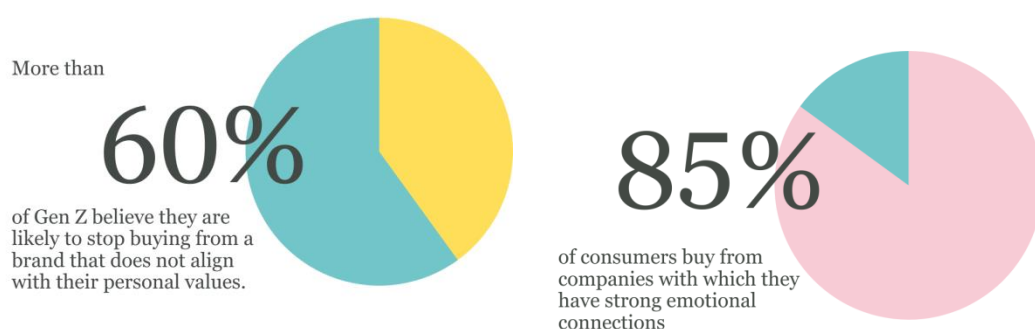
- Emotional connections play a pivotal role in shaping consumer behaviour, as they intersect with both emotional and rational needs, jointly influencing brand preferences. The potential impact of acknowledging the importance of emotional connections. Is paramount because an estimated 95% of purchasing decisions occur unconsciously. Research findings indicate that customers who establish emotional connections with a brand tend to have a threefold increase in lifetime value compared to others and are more inclined to become brand advocates. Enterprises that prioritize the cultivation of emotional ties have the potential to outperform competitors within their respective industries. Notably, 90% of purchasing choices are made on a subconscious level, underscoring the profound impact of emotions.
- Visual stimuli hold remarkable power, with human beings processing visual information a staggering 60,000 times faster than text. This rapid processing of visuals underscores their significance in communication and brand engagement.
- Emotion forms the cornerstone of brand experiences, contributing to approximately 50% of the overall brand perception. This underscores the critical role emotions play in shaping how individuals perceive and connect with brands.⁹

Strengthening Emotional Connections with Customers:

⁹ Magids, Scott, Alan Zorfas, and Daniel Leemon. ,” The new science of customer emotions.” Harvard Business Review, 93(11-12), 120-130. (2015)Retrieved from <https://hbr.org/> (Last Visited on August 8-2023)

- **User-Centric Design:** Prioritize the user experience by designing for the audience's needs and preferences. Listen actively and empathetically to understand their underlying needs before crafting responses. Brands that fail to address customer needs may lose their competitive edge.
- **Authentic Brand Story:** Craft an authentic and compelling brand story that resonates with people. Share your brand's history, origins, and motivations. Develop a distinct brand voice that conveys your story, and values, and aligns with your target audience's beliefs.
- **Shared Values:** Establish a connection with your audience by aligning your brand's values with theirs. Consumers prefer brands that share their values, and this alignment can foster a stronger bond.
- **Incorporate Enjoyment:** Create enjoyable and immersive brand experiences that engage all the senses. Fun and visual appeal can leave a lasting impact on customers.
- **Consistency is Key:** Maintain consistency across all brand touchpoints, ensuring a uniform brand experience that builds trust.

Establishing a robust emotional connection with customers is essential for businesses. By comprehending the emotional triggers that drive consumer behaviour and designing brand experiences that resonate, businesses can create lasting and profitable relationships with their target audience. Design plays a pivotal role in evoking emotions and should be leveraged to craft a more personal and emotionally resonant brand experience.¹⁰



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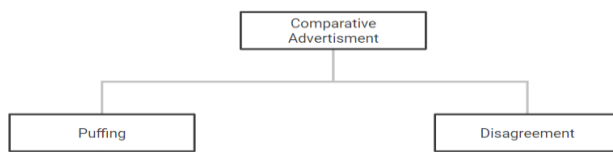
¹⁰ Higgins, N., "Unleashing the Power of Emotions: The Science Behind Building Lasting Brand Connections." (2013) TAP Creative. Retrieved August 5, 2023, from <https://tapcreative.ie/news/unleashing-the-power-of-emotions-the-science-behind-building-lasting-brand-connections/>

¹¹ id

Comparative Advertising: Balancing Competition and IP Compliance

Comparative advertising, often referred to as comparative marketing, is a promotional strategy that involves a company directly comparing its product or service to those of its competitors. This approach is aimed at highlighting the advantages and superior qualities of the company's offering when compared to rival products or services. By doing so, the advertiser seeks to influence consumers' perceptions and preferences, ultimately convincing them that their product is the better choice in the market.

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This marketing tactic involves several key elements and considerations:

1. **Product Comparison:** Comparative advertising typically presents a side-by-side comparison of the advertiser's product or service alongside one or more competing products or services. This comparison can be based on various attributes, including price, quality, features, performance, or benefits.
2. **Emphasizing Advantages:** The primary objective of comparative advertising is to emphasize the advantages, strengths, or unique selling points of the advertiser's product or service. This may involve demonstrating why it offers better value, effectiveness, or superiority in some aspect.
3. **Identifying Competitors:** Comparative advertisements often explicitly identify the competitor's product or service by name, logo, or distinctive features. This direct comparison distinguishes this advertising approach.

¹² Akhileshwar Pathak, "Liberalisation and Law on Comparative Advertising in India," (2004), <https://ideas.repec.org/p/iim/iimawp/wp01792.html>. (Last Visited on August 9-2023)

¹³ Created by Author Naina.n.chudasama

4. Educating Consumers: Comparative ads aim to educate consumers about the differences between products, enabling them to make informed purchasing decisions. By providing relevant information, advertisers hope to persuade consumers to choose their product over others in the market.

5. Legal Considerations: Comparative advertising is subject to legal regulations and must adhere to fair competition and advertising standards. Laws governing comparative advertising may vary by country, and advertisers must ensure compliance to avoid legal disputes.

6. Ethical Considerations: While comparative advertising can be an effective marketing strategy, it also raises ethical questions. Advertisers must strike a balance between promoting their product's strengths and providing accurate and fair information.

7. Consumer Perception: The effectiveness of comparative advertising hinges on how consumers perceive the comparison presented. If consumers trust the information and find it convincing, they are more likely to choose the advertised product.

8. Market Dynamics: The decision to employ comparative advertising can be influenced by market conditions and competitive factors. Companies may choose this strategy when they believe it will give them a competitive edge.¹⁴***Legal Compliance***

While commercials enjoy constitutional protection under the banner of free speech, it's imperative not to grant them unrestricted immunity solely due to their ability to raise public awareness. Vigilance is needed to prevent commercials from either misleading audiences or maligning competitors' products. Originally, the Monopolies and Restrictive Trade Practices Act, 1969 ¹⁵(MRTP) governed false or deceptive advertising, classifying it as "unfair trade practices." However, the MRTP Act was replaced by the Competition Act 2002¹⁶, though the

¹⁴ Jeerome G. Lee, "Comparative Advertising, Commercial Disparagement and False Advertising," 71 Trademark Rep. 620 (1981). (Last Visited on August 4-2023

¹⁵ Monopolies and Restrictive Trade Practices Act, 1969
The Competition Act 2002

concept of "unfair trading practices" persisted within the Consumer Protection Act of 1986¹⁷, offering recourse for aggrieved traders.

To address the absence of a legislative mechanism for addressing advertisers' grievances, the establishment of the Advertising Standards Council of India (ASCI) was crucial. ASCI principles aimed to ensure equitable treatment in comparative advertising while considering the interests of all stakeholders. These principles aimed to prevent disparities that could unfairly favour one producer and mandated that comparisons be accurate and evidence-based to prevent consumer deception.¹⁸

However, despite ASCI's initiatives, enforcement challenges arose, particularly when non-member entities violated these principles. Provisions within the Trade Marks Act, namely Sections 29(8)¹⁹ and 30(1)²⁰, were designed to tackle such infringements. Section 29(8) addressed trademark infringement in commercials, while Section 30(1) exempted comparative advertising from the definition of infringement provided it adhered to "honest practices." Notably, the term "honest practice" remained undefined.²¹

Interpreting phrases such as "not harmful to the trademark's repute" and "in compliance with honest standards" often led to confusion. Any analogy that tarnished the image of the trademark owner was to be avoided. The determination of a commercial's honesty was contingent on a reasonable consumer's perspective, and advertisements featuring hyperbolic or exaggerated claims might still be considered honest.

Advertising, categorized as commercial speech, found protection under Article 19(1)(a) of the Constitution of India. Restrictions on advertising could only be imposed through by-laws governed by Article 19(2) of the Indian Constitution.²² In the landmark *Horlicks Ltd. v.*

¹⁷ Consumer Protection Act of 1986

¹⁸ Advertising Standards Council of India. The Code for Self-Regulation of Advertising Content in India. ASCI, 2018. https://www.ascionline.org/images/pdf/code_book.pdf. (Last Visited in September11-2023)

¹⁹ Section 29(8) Trade Marks Act,1999

²⁰ Section 30(1) Trade Marks Act,1999

²¹ The Trade Marks Act, 1999 (No. 47 of 1999), Acts of Parliament, 1999 (India). (Last Visited on August 19-2023)

²² Article 19(2), Consitution of India,1950.

Heinz India Private Limited ²³the courts underscored the essential role of unhindered dissemination of commercial knowledge in a democratic nation.

Trademark infringement through advertising was addressed by Section 29(8) of the Trade Marks Act. Advertisements that deviated from honest practices, and harmed the unique identity or integrity of the trademark constituted infringement under Section 29(8). Conversely, commercials adhering to honest practices without harming the trademark's identity or reputation were legally acceptable under Section 30(1) of the Trade Marks Act. Consequently, Section 30(1) granted comparative advertisements an exemption from the infringement definition as outlined in Section 29 ²⁴of the Trade Marks Act.²⁵

The triple test for disparagement in a commercial advertisement, as established in the case of Reckitt Benckiser (India) Ltd. v. Hindustan Unilever Ltd²⁶., includes the following key elements:

- False or Misleading Statement: The advertisement must contain a false or misleading statement of fact about the product being compared.
- Potential to Deceive: The segment of the audience that views the advertisement should be deceived or have the potential to be deceived by the misleading information.
- Influence on Purchasing Decisions: Deception in the advertisement should be likely to influence consumers' purchasing decisions.

In assessing whether disparagement has occurred, the court considers not only the content of the advertisement but also the intent behind it, the manner in which it is presented, and its overall impact. Disparagement should not involve ridiculing or condemning a competitor's product.

Comparative advertising is a common practice, but it must comply with certain guidelines and legal principles in India. The constitutionality of comparative advertising is upheld under

²³Horlicks Ltd. v. Heinz India Private Limited (2019) 256 DLT 468.

²⁴ Section 29 of the Trade Markets Act, 1999

²⁵ Shukla, Uphar. "Comparative Advertising and Product Disparagement vis-à-vis Trademark Law." Journal of Intellectual Property Rights 11, no. 4 (2006): 409-424. (Last Visited on August 14-2023)

²⁶ 151 (2008) DLT 650, Reckitt Benckiser (India) Ltd. v. Hindustan Unilever Ltd

Article 19(1)(a) of the Indian Constitution.²⁷, which protects the freedom of speech and expression. However, it should not involve false, misleading, or deceptive claims.

Important legal cases and principles related to comparative advertising and disparagement in India include:

The statutory framework for comparative advertising in India has evolved over time, with a shift from the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP) to the Competition Act, 2002. The Trade Marks Act, 1999, also addresses comparative advertising, permitting it to some extent as long as it is honest and does not damage the distinctive character of a competitor's product.

The Consumer Complaint Council (CCC) of ASCI reviews complaints about objectionable ads in India, ensuring compliance with legal and ASCI guidelines, particularly in comparative advertising within the FMCG Fast Moving Consumer Goods sector.

Case Study

Emami Limited v Dabur India Limited²⁸

Background:

- The appellant (defendant) launched a hair oil product named "Dabur Cool King Thanda Tel."
- The respondent (plaintiff) claimed that this product's branding, including the trade name and trade dress, infringed upon their product, "Navratna Ayurvedic Tel."

Legal Issue:

- The main issue in this case is whether the appellant's product's branding infringes upon the respondent's product and whether an ad interim injunction is justified.

Key Points from the Court's Decision:

- **Ad Interim Injunction:** The learned Single Judge granted an ad interim injunction that restrained the appellant from selling its product in the packaging in question or any other packaging that is confusingly or deceptively similar to the respondent's product.

²⁷ Article 19(1)(a) of the Indian Constitution, 1950.

²⁸ Emami Limited vs Dabur India Ltd. 2023 LiveLaw (Del) 699

- **Comparison of Products:** The court noted that, while the respondent's allegations of infringement may not be clearly established at the ad interim stage, there were similarities between the products' branding that were "stark" and "glaring."
- **Timeline:** The court considered the timeline of the products in the market. The respondent's "Navratna Oil" had been available since January 1989, while the appellant's product was launched in May 2023.
- **Lack of Opportunity:** The appellant argued that it was not given a proper opportunity to present its case in opposition to the ad interim injunction. The appellant claimed that it had been manufacturing and distributing cooling hair oil since 1972.
- **Registered Trademarks:** The appellant pointed out that it held trademark registrations for related products, including "Super Thanda Oil."
- **Third-Party Products:** The appellant contended that there were various third-party products on the market with similar trade dress and packaging.

Analysis:

Content marketing involves creating and sharing valuable, relevant, and consistent content to attract and engage a target audience. The goal is to drive profitable customer action by providing information that helps consumers make informed decisions, establishing trust and brand loyalty. The respondent failed to distinctively pitch its product in the market which led to unfair comparative advertisement and cost the company.

The Judgement signifies the need for appropriate, fair advertisement which does not cause harm to the brand value and profits. Comparative advertising can enhance content marketing by offering clear product distinctions, it must be approached carefully to avoid legal risks and maintain consumer trust. The case highlights that content marketing should prioritize honest, informative, and respectful comparisons to build lasting brand credibility and engage consumers effectively.



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The Dark Side of Content Marketing: IP Misuse

Deceptive Practices and Consumer Deception

Protecting intellectual property (IP) is vital for maintaining brand identity and safeguarding creative works. IP enhances marketing by enabling targeted, personalized content, boosting brand recognition, and engagement. Organizations increasingly use IP marketing, leveraging data like company size and location to create tailored online experiences, thereby setting themselves apart in a competitive, content-driven landscape.

Regulatory Measures and Consumer Education

In the digital age, advertising has taken on new forms and faces, with digital marketing becoming an integral part of businesses' strategies to reach and engage consumers. However, as digital advertising evolves, so do the tactics used to influence consumer behaviour. One such set of tactics is known as "Dark Patterns" – deceptive design patterns aimed at leading consumers to make choices that may not be in their best interests. This article delves into the concept of Dark Patterns, explores their impact on consumers, and examines the role of regulatory bodies, such as the Advertising Standards Council of India (ASCI), in curbing deceptive practices in digital advertising.

Understanding Dark Patterns

Dark Patterns encompass a wide range of design practices commonly found in online interfaces that manipulate or deceive consumers into making decisions that may not align with their best interests. These practices often exploit digital choice architecture in user

²⁹ Parina Katyal, "Delhi High Court Restrains Dabur From Selling Its 'Cool King Thanda Tel' In A Packing Similar To Emami's 'Navratna Ayurvedic Oil,'" LiveLaw, August 17, 2023, <https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-restrains-dabur-sale-cool-king-thanda-tel-similar-packaged-emami-navratna-oil-235447>. (Last Visited on August 10-2023)

interfaces, undermining consumer autonomy, decision-making, and choice. Dark Patterns can manifest in various ways, from subtle nudges towards certain actions to blatant misrepresentations.

The OECD Committee on Consumer Policy's Definition

The OECD Committee on Consumer Policy provides a working definition of Dark Patterns to facilitate discussions among regulators and policymakers. According to this definition, Dark Commercial Patterns are business practices that employ elements of digital choice architecture, primarily in online user interfaces. These practices subvert or impair consumer autonomy, decision-making, or choice and often involve deception, coercion, or manipulation, resulting in direct or indirect consumer harm. Measuring such harm can be challenging in many instances.

Goals and Motivations of Dark Patterns

Dark Patterns typically share common end goals, all aimed at boosting business revenue. These goals include:

- Encouraging Purchases: Dark Patterns may entice consumers to make purchases they otherwise wouldn't or to buy more than they originally intended.
- Increased Spending: Businesses may employ Dark Patterns to prompt consumers to spend more money on a purchase or devote more time to a service than they initially desired.
- Gathering More Data: Some Dark Patterns involve the collection of excessive personal data from consumers, often without their informed consent.

The Advertising Standards Council of India (ASCI) plays a vital role in regulating digital advertising to protect consumers from deceptive practices. ASCI's guidelines promote transparency, honesty, and fairness, addressing issues like drip pricing, bait-and-switch tactics, false urgency, and disguised ads. These guidelines align with ASCI's code to ensure that advertisements do not mislead consumers. As digital advertising grows, so do challenges like Dark Patterns, which can exploit consumers. ASCI's role is crucial in upholding ethical

standards, and ensuring that advertisers prioritize transparency and trust, ultimately creating a more consumer-friendly digital environment.³⁰

Celebrities in Branding: Navigating the IP Landscape

Celebrity endorsements, a common marketing strategy, leverage celebrities' influence to boost brand image and reach. While effective, this practice presents challenges and ethical considerations, highlighting the importance of protecting intellectual property (IP) rights to maintain brand integrity.³¹

Challenges and Ethical Considerations

While celebrity endorsements offer substantial benefits, they also present a range of challenges and ethical dilemmas:

- **Authenticity:** One of the foremost ethical concerns is authenticity. Consumers expect that celebrity endorsers have a genuine connection to the product or service they promote. When endorsements appear disingenuous or insincere, it can erode consumer trust.
- **Tarnished Image:** Celebrities often grapple with controversies and scandals. If a celebrity endorser becomes embroiled in negative publicity, it can reflect poorly on the brand. Brands must weigh the risks of aligning with celebrities who may harm their reputation.
- **Unsafe or Ineffective Products:** Ethical concerns arise when celebrities endorse products that are harmful, unsafe, or ineffective. For instance, endorsing tobacco products or pseudoscientific remedies can have detrimental consequences.

³⁰ ASCI (Advertising Standards Council of India). (2023, May 11). The ASCI code guidelines for deceptive designs in online advertising. Retrieved from <https://www.ascionline.in/the-asci-code-guidelines/> (Last Visited on August 18-2023)

³¹ Yogesh K. Dwivedi, Elvira Ismagilova, International Journal of Information Management, Volume 59,2021,102168, ISSN 0268-4012,<https://doi.org/10.1016/j.ijinfomgt.2020.102168>. (Last Visited on August 17-2023)

- **Compelling Unwanted Purchases:** Celebrity endorsements can influence consumers' buying behavior. However, when these endorsements lead to impulsive purchases of unnecessary or potentially harmful products, ethical issues emerge.
- **Misleading Information:** If celebrities make deceptive claims or endorse products that perpetuate stereotypes or unrealistic standards, it can be seen as unethical. Brands must ensure that their endorsements do not promote misleading information.
- **Conflict of Interest:** Celebrities have personal values and principles that may conflict with the products they endorse. Ethical implications arise when a celebrity's endorsement contradicts their publicly stated beliefs or values.
- **Override of Expert Opinion:** In some instances, celebrity endorsements may override expert opinions or medical advice. This can be problematic when consumers prioritize a celebrity's endorsement over the guidance of qualified experts.³²

Conclusion

In the rapidly evolving landscape of technology and branding, the intricate relationship between content marketing and Intellectual Property (IP) has emerged as crucial. Our exploration highlights the vital role of a regulatory body, equipped with updated rules for 2023, to guide and uphold ethical practices in this dynamic domain. Such an entity is essential for fostering innovation while ensuring compliance with IP regulations, safeguarding creative assets, and maintaining brand integrity.

The symbiotic relationship between content marketing and IP protection is central to a brand's success. Leveraging IP strategically allows brands to create distinctive identities in a competitive marketplace. Consumer psychology further underscores the importance of emotional connections in branding, transforming products into profound experiences. However, this must be balanced with ethical considerations, particularly in comparative advertising, where the legal and moral boundaries are delicate. The *Emami Limited v Dabur India Limited* case study illuminated the complexity of IP-related disputes in branding,

³² id

emphasizing the need for proactive IP protection and effective dispute resolution strategies. Additionally, the darker aspects of content marketing, such as IP misuse and deceptive practices, highlight the need for robust regulatory measures and consumer education to maintain trust between brands and consumers.

The involvement of celebrities in branding adds another layer of complexity, where navigating IP rights and ethical considerations requires careful legal and ethical balancing to preserve the authenticity of both the brand and the celebrity.

As the accelerating pace of technological advancements necessitates a vigilant regulatory body with contemporary rules. This entity will guide brands in harnessing emerging technologies like AI while adhering to ethical standards, ensuring that innovation thrives within a framework that protects IP rights and consumer interests. Ultimately, the fusion of content marketing and IP will continue to shape the future of branding, supported by updated regulations that reflect societal changes and uphold ethical, innovative, and trustworthy practices.