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### RESEARCH ARTICLE

#### SURROGATE ADVERTISING: IS IT ETHICAL OR A MONSTER IN A MASK?.

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#### Abstract

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#### Introduction:-

*"Let's gear our advertising to sell our goods, but let's recognize also that advertising has a broad social responsibility."*  
 Leo Burnett<sup>1</sup>

In this current global business environment with a large variety of goods and services, advertising is a suitable instrument for disseminating information and creating awareness among the existing and potential customers. The company promotion depends principally on different types of advertisements to insist upon their products' superiority or satisfaction value than those of the competitors. Advertisements are all pervasive. They are everywhere around us in television, radio, newspapers, magazines, events, give-aways, internet and more so on our mobiles and laptops. Advertisements are found in almost every imaginable place and also where they are least expected. Some advertisements are very noticeable while others are very subtle yet catchy. Consumers are constantly bombarded with ad messages having a persuasive effect on their minds. Advertisements are a paid form of communication having a two-fold purpose. Firstly, making the consumer conscious about the products and services available in the market and secondly, creating a brand image of the company. In many developing countries, advertisements have overwhelmingly impacted on people thereby comprehending their lifestyle, their morals and of course their behavior in relation to outside world. Advertisements are inherent in our lives and strongly influence our living patterns.<sup>2</sup> The decision of a customer, whether to buy a particular product or not, is guided by, to a larger extent, by a company's advertising campaign. Nevertheless, advertising is the cornerstone of our socio-economic system and has become an indispensable part of our legal fabric. Advertising is an extensive, sensitive and a very much diversified subject.

But all that is advertised is not healthy and beneficial to consumers. Many a times, consumers tend to make unhealthy choices after being tempted by the ads, especially children, who are allured by the misleading ads of Dominos or McDonalds and compelled to eat junk food, or the women, who in the vague to get fairer or slimmer are duped by various infomercials aired on television. Advertising of junk food is playing a big role in making children stout. More so, consumers are even compelled to buy products that are not even wanted by them. This ultimately

<sup>1</sup> Available at- <https://blog.hubspot.com/agency/leo-burnett-quotes>. Visited on 9<sup>th</sup> February 2018.

<sup>2</sup> George E. Belch & Michael A. Belch, "Advertising & Promotion - An Integrated Marketing Communications Perspective", 2010, 7<sup>th</sup> Edition, pp 534- 538

leads to not only the consumption but also the production of unnecessary waste that is damaging the lives of the buyers as well as the beautiful planet we live in.<sup>3</sup>

Advertisements promise happiness in return of money. The advertisements are favoured in any country due to various economic benefits. The companies have to spent handful of money for advertising different commodities, else their capital will be lost which will effect people in losing employment. Similarly, because of fake advertisements relating to medical care, many people are poisoned or suffer from many diseases. Let say, advertisements regarding medicine are exhibited in such a pattern which makes people think of not consulting a doctor and rely upon such advertisements. Moreover, television commercialise the affirmative side of the commodities but secrets the harmful impact of the same, which resultantly affects the human body. Advertising is not considered as a social waste even though the producers and distributors resort to healthy or unhealthy practices to induce the customers towards their products. More often, the companies in an urge to sell their products and earn profits resort to indirect advertising, i.e. Surrogate Advertising. There is no clear definition of the term surrogate advertising in the business or advertising industry. So, we have divergent views on what it means. More often, it is a form of 'brand extension' or 'brand recall'.

### Meaning And Concept:-

Merriam Webster defines Surrogate as a 'substitute'. The concept of surrogacy is often referred to with surrogate motherhood whereby a woman is artificially inseminated with the sperm of the father. She carries the baby in her womb and delivers it to the couple hiring the womb to raise. The surrogate mother is the baby's biological mother.<sup>4</sup> That's because it was her egg that was fertilized by the sperm of the father. Similarly, the concept of surrogate advertising aspires to keep the brand name of those products alive, whose advertisement is banned. Surrogate advertisements are akin to advertisements which are otherwise directly aimed at consumers. The difference here is that it is an advertisement in a roundabout way to the same consumers. In other words, surrogate advertisement can be defined as "an advertisement that clones the brand portray of commodity to depict it as a variegated commodity of the same brand. Therefore, the substitute could either correspond to the original product or may perhaps be an altogether diverse product but is promoted under the reputable and recognised brand name of the original product. In a layman's language, surrogate advertising is an indirect way of advertising when the outright advertisement of a product is not allowed or is banned. The word 'surrogate advertising' means to duplicate some brand image of any particular commodity comprehensively with an intention to elevate another commodity of same brand. One critical function that surrogate advertising does is that of brand recall which does not always leads to an increase in sales.<sup>5</sup> Few opined that surrogate advertising is done only for the sake of a name of any particular brand. Pramod Krishna<sup>6</sup>, refused to accept the term surrogate advertising and categorises them as advertising for brand extensions. Santosh Desai<sup>7</sup>, opines it as "when you advertise a product of a brand in the guise of the main brand logo, it is called surrogate advertising."

Launching a new product with a common brand name is termed as brand extension and it is not per se illegal or objectionable or banned as is the case with surrogate advertisements. The problem arises when a brand extension is used as a response to a ban in advertisement of a product or more.<sup>8</sup> The key players entering into the field of surrogate advertising are tobacco, cigarette, liquor, pan masala, beedi and gutka manufacturers. The advertisement of these products is explicitly banned by the government of India considering these products to be harmful and adversely affecting the mental faculties of the consumers and creating discomfort among the general public.<sup>9</sup> The

<sup>3</sup> Sangkrito Ray Chaudhuri and Akanksha Raizada, "Legal Protection of Consumers in a Global Economy- Recent Approaches and the Way Forward". Available at - [http://bhu.ac.in/lawfaculty/seminar2013\\_1/TwoDayNationalSeminar.pdf](http://bhu.ac.in/lawfaculty/seminar2013_1/TwoDayNationalSeminar.pdf). Visited on 9th February 2018.

<sup>4</sup> Available at- <https://www.webmd.com/infertility-and-reproduction/guide/using-surrogate-mother#1>. Visited on 9<sup>th</sup> February 2018.

<sup>5</sup> Available at - <https://www.scribd.com/document/149521552/Meaning-of-Surrogate-Advertising>. Visited on 9th February 2018.

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<sup>7</sup> Chief Operating Officer of Future Brands

<sup>8</sup> Sharbani Raut, Article on "Surrogate Advertisements in India", Posted on 30<sup>th</sup> June 2017. Available at- <http://www.mondaq.com/india/x/606974/advertising+marketing+branding/CROSS+BORDER+INSOLVENCY+A+NEW+REGIME>. Visited on 10<sup>th</sup> February 2018.

<sup>9</sup> Ibid.

companies manufacturing liquor, tobacco or other harmful products are not advertising their product, instead they are extending their equity into other fields.

Surrogate advertising works as a reminder. It works to memorise the consumers about the brand being advertised and not the product. It attempts to make possible what is otherwise impossible under the legal regime by stressing upon brand personality, ideology, and positioning. The communication partners try hard and find the right tone and manner, the mood, etc. to best capture the brand essence. Hence, surrogate advertising is considered much more than a soda bottle. Big business entities, having technology at their disposal, are playing with the virtual reality, short films, concerts, musical and Bollywood events (like- Filmfare awards, IIFA awards Live concerts, etc.), award functions ( Red and white bravery awards), sport events (like- IPL, football matches, kabaddi premier league, etc.) to catch the attention of the audiences to their brands. From water bottles to music cds, sports equipments to fashion line, the brands have left no stone unturned to keep the brand image alive among the customers and win their loyalty. The well-known and most established brands like Kingfishers, Royal Challenge, Seagrams, Bagpiper, Smirnoff, Wills, Red and White, Red Square, etc have been undertaking various promotional activities to circumvent the ban on direct advertisement on their products. For example, Bagpiper produces soda and liquor under the same brand name. The advertisement aired by the company on the television basically promotes soda. Hence, the ad of soda actually acts as a surrogate to liquor produced under the identical brand name. Similarly, a popular beer brand Kingfisher is always at high pedestal and in front position of surrogate advertising from fashion shows to bottled water to soda to calendar<sup>10</sup>. In the same way, Wills brand has a varied lifestyle products and personal care range.<sup>11</sup>

Bagpiper was probably the pioneer in this subtle art of advertising.<sup>12</sup> Later on many brands tried to ape them but failed to create a magic. Some brands like Officer's Choice, Seagram's, Kingfishers, McDowell's managed to create a buzz. But changing times and advances in the technology have created new avenues for the brands to promote themselves innovatively with the restrictions in place. Whilst the established brands have a good share in the market, new entrants and small businesses find it difficult to get a niche in the market of surrogates. One possible reason being the cost escalation. Brands do not only manufacture the surrogates, but also bear the cost of surrogate advertising, ending up in added production cost. Many brands have in fact legitimized their surrogate products like Wills lifestyle is a conventional apparel brand and McDowell's drinking water is easily traceable in the markets.

The liquor and tobacco industry always have their own standing in defence that they adhere to every law and regulation and often claim that if they have equity in the market, why they should not advertise? Moreover, brand extension is practised followed by various merchandise categories in the industry. What they all actually do is taking advantage of the loopholes. They play with the minds of the people with the help of certain illusions and affect the consumption behaviour of the buyers. Social media, nowadays, is providing a helping hand to such brands. For example, Kingfishers has a facebook page and a twitter account to promote its brand. This use of social media in advertising is a non formal yet creative strategy to reach the customers in a legal yet an indirect way. It is rightly an attempt to arrest the human intelligence at the cost of their lives.

India is not the only country that bans controversial advertisements depicting tobacco and other related products. However, this tends to constant influx of surrogate advertising in a country like India<sup>13</sup>. Many moons ago, the government of India took a wise decision and prohibited all the direct advertising of alcohol, tobacco and cigarettes. This was indeed a positive step towards improving the health of the consumers, especially the mental health and also propagating the need for a healthy lifestyle among the masses. The stance of the government is that surrogate advertising is misleading as it intends to advertise the brand rather than its extensions.<sup>14</sup> The advent of surrogate advertising in India can be traced back to the mid 1990's when the Cable Television Networks (Regulation) Act,

<sup>10</sup> Available at - <https://www.forecastadvgtg.com/blog/surrogate-advertising-in-india/>.

<sup>11</sup> Available at - <https://www.quora.com/Which-are-some-good-examples-of-surrogate-advertisements>. Visited on 10th February 2018.

<sup>12</sup> Article on "All About Surrogate Ads, Oops, Brand Extensions". Available at - [http://www.afaqs.com/news/story/20862\\_All-about-surrogate-ads-oops-brand-extensions](http://www.afaqs.com/news/story/20862_All-about-surrogate-ads-oops-brand-extensions). Visited on 10th February 2018.

<sup>13</sup> Supra Note 8.

<sup>14</sup> C. Sushma and C. Sharang, "Pan masala advertisements are surrogate for tobacco products" Indian Journal of Cancer; April - June 2005, Volume 42, Issue 2.

1995 read with Cable Television Rules, 1994 was enforced. It banned direct advertisements of tobacco, liquor and cigarettes. Before that, the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975 made it obligatory to exhibit a statutory health warning on all the packages of the tobacco, liquor and cigarettes and their respective advertisements. We often read or hear a warning quote-“consumption of alcohol and tobacco products is injurious to health”. The Ministry of Health and family welfare has further issued a notification in March 2017 and made it obligatory that manufacturers of tobacco and cigarettes will display pictures of throat cancer and mouth cancer on the packaging. We often view these warnings in the cinemas and even on television before or during any movie or a theatre show. It tends to make the people aware about the harmful effects of consuming tobacco, gutka, beedis and pan masala.<sup>15</sup> Keeping in mind all this, government had to ban the advertising of these products. But, this led the marketers, manufacturers and ad agencies to put their heads together and find newer and more innovative ways to market their products indirectly to people because eventually they have a product to sell and make profits.

#### **Legal Framework On Surrogate Advertising:-**

In a country like India, it is often seen that surrogate advertisements are usually done with regard to beedi, cigarette and other related tobacco products as well as liquor industries. Mr. Anbumani Ramadoss (former Union Health Minister) protested the title of one IPL team i.e. Royal Challengers which was impliedly considered to be an indirect advertisement for the famous liquor brand ‘Royal Challenge’. But the Supreme Court of India clarified the point that the team was not named exactly as liquor brand ‘Royal Challenge’, but it is named as ‘Royal Challengers’. The bench also observed that those who drink are often fascinated by such conduct and also mentioned that a name of a liquor brand would not in any way affect the non-drinkers.<sup>16</sup> On February 25, 2008 the Government of India notified a ban on the surrogate advertisements relating to liquor, tobacco, gutka, etc. in all the print, electronic and outdoor media.<sup>17</sup> However, on 27.02.2009, I&B Ministry precipitated a notification that was altering some of the previous rules and allowed advertisements of such commodities which have a brand name that is similar or common to any liquor or other tobacco related products but however, concentrating mainly on point that the story board or visual of the advertisement must show only the product being advertised and not the banned products in any form or manner.

Undoubtedly, notification released on 27.02.2009 permitted the advertisements of such products having brand name or logo similar or common to any liquor or other tobacco products but at the same point of time, it provided that no reference can be made to all these restricted products, directly or indirectly in any way at any cost. Moreover, later I&B Ministry, vide its Directive dated June 17, 2010 made it very clear that any notification made on 27.02.2009 is not deemed to be used for any sort of justification for any matter, with a view to broadcast advertisements of any such products that tends to violate Rule 7(2)(viii)(a) of CTNR.<sup>18</sup>

In 2014, social activist Teena Sharma filed a PIL in the Delhi High Court seeking a ban on surrogate advertisements. She argued that under the Cable Television Network rules 1994, the CBFC must preview and certify all advertisements that are considered as authentic and bonafide by I&B Ministry. For unknown reasons, this PIL was withdrawn.

Despite the directives from the Supreme Court and Ministry of Health & Family Welfare, much remained in white and black. Various legislative measures contemplated by the government include inter alia:-

#### **The Cable Television Networks (Regulation) Act, 1995:-**

Rule 7(2)(viii) of the Cable Television Rules prescribes that direct as well as indirect promotion of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants is strictly prohibited. It also provides that any product which uses

<sup>15</sup> Kiran Marnal, “Surrogate Advertising in India”, Posted on 20<sup>th</sup> June 2011. Available at - <http://www.theadvertisingclub.net/index.php/features/editorial/3224-surrogate-advertising-in-india>. Visited on 10th February 2018.

<sup>16</sup> Available at - <https://sports.ndtv.com/cricket/now-ramadoss-challengesbangalore-ipl-team-over-name-1605911>. visited on 10th February 2018.

<sup>17</sup> Available at- <http://economictimes.indiatimes.com/industry/services/advertising/govt-issues-notification-banning-surrogateliqor-ads/articleshow/2878618.cms>. Visited on 11th February 2018.

<sup>18</sup> Available at - <https://naiknaik.com/surrogate-advertising-in-india-permissible-or-not/>. Visited on 11<sup>th</sup> February 2018.

any brand name or logo, which is similarly used for tobacco or any other related products thereon can be advertised by cable services only upon fulfilling the following conditions:

1. The advertisement is only to show the product which is supposed to be advertised. Moreover, it should not be advertising any prohibited products in any form.
2. The adverts are not allowed to make any sort of references or relation to the products which are prohibited.
3. The advertisements should not be such that contains any phrases leading to promote prohibited products.
4. The advert should not use any such colors while advertising, which are directly or indirectly linked with such prohibited products.
5. The adverts are not supposed to use any situation which tends to promote prohibited products.

#### **Cigarettes And Other Tobacco Products(Prohibition Of Advertisement And Regulation Of Trade And Commerce, Production, Supply And Distribution) Act, 2003 ("Cotpa"):-**

The basic purpose of this act is to protect young children and passive smokers from the addiction of tobacco. This act is in consonance with article 47 of the Directive Principles of the state policy as enshrined in the Indian constitution. Advertisement<sup>19</sup>, as defined in the act includes visible representation in the nature of notice, label, wrapper, circular and includes announcements made orally or by some other means. The definition under this act comprehensively covers the concept of surrogate advertising. Usually, the products like tobacco are often advertised under the name of some alternative brand. Such advertisements are covered and restricted under this act.

The act also prohibits the adverts of cigarettes or tobacco products by any person in any form.<sup>20</sup> In 2005, amendments were made in section 5(1)(a) to cover indirect advertising as well.

#### **Advertising Standard Council of India (ASCI) code:-**

ASCI is a form of voluntary council and which is also a self-regulatory one. It is constituted as per the provisions of section 25 of the Companies Act, 1956. It is a non-profit company working to look after the issues relating to advertising of products that are considered to be hazardous for people living in society. It is committed to promote honest advertising across the nation in the interest of the consumers. It has adopted a code of Self Regulation which is aimed at preventing false and misleading advertising. Chapter 3 of the code deals with the advertising related to harmful products/situations. As per the code, no advertising is allowed which propagates the products which are banned under any law prevailing in India or under the code itself. Wherever the advertisement of any product is banned or restricted, any indirect advertisement of such product is also not permitted. It also provides that an advertisement should not in any way suggest the customers that it is an advert which is otherwise prohibited. The ASCI, since 2012, also provides for an objective criterion to be matched by a product to qualify as a correct brand extension.<sup>21</sup>

#### **The Prohibition of Publication or Telecast of Vulgar, Obscene and Surrogate Advertisements and Re-mix songs by Print and Electronic Media Bill, 2004:-**

Though the bill has not yet become an act, the framework which was laid down by an act of legislative bodies was then forwarded to executive members in order to fill up requisite gaps therein. The act provided for full restriction for the publishing surrogate advertisements thereby screening some alternatives of liquor and other related tobacco products with the help of magazines and newspapers. However this all is done in order to preserve the cultural heritage and moral values of our society. In this bill, an attempt had been made to define precisely what surrogate advertising is. Section 2(d), stated that surrogate advertisement means an advertisement which depicts an alternative commodity in the realm of the original one, which cannot be otherwise shown through any print or electronic media. Section 3 of the bill provides the punishment for the violaters.

<sup>19</sup> **Section 3(a)** of the act defines 'advertisement' as including: 'any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas.

<sup>20</sup> **Section 5(1)** of the Act states that no person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.

<sup>21</sup> Available at - <https://www.ascionline.org/>. Visited on 11<sup>th</sup> February 2018.

**Framework Convention On Tobacco Control(FCTC):-**

The convention was ratified by India on 5th February 2004 and it came into force on 27th February 2005. The convention aims to save from any sort of harm or damage that may be done to present and future generations which may affect their health, any kind of social or environmental issues and all sort of economic results of tobacco intake as well as exposure to tobacco, thereby giving a broad worldwide framework for controlling tobacco and its related products. Article 13 of the Convention states: 'Tobacco advertising, promotion and sponsorship' which further implies that a total restriction is the need of an hour. Such a convention has given all the member nations full freedom to bring out such legislation that tends to limit and ban all advertisements or promotion of tobacco and its related products<sup>22</sup>.

**The Surrogate Advertisements (Prohibition) Bill, 2016<sup>23</sup>:-**

This act is an endeavour to provide an all inclusive definition on the subject matter and also precisely describe the penalties. Section 2(d), stated that surrogate advertisement means an advertisement which depicts an alternative commodity in the realm of the original one, which cannot be otherwise shown through any print or electronic media. Section 3 provides that no person shall publish or telecast or cause to be published or telecast or arrange to take part in the publication or telecast of surrogate advertisement. Section 5 provides that whoever contravenes the provisions of this Act shall be punished with imprisonment for a term which shall not be less than three years but which may extend upto ten years and with fine which shall not be less than three lakh rupees but which may extend upto ten lakh rupees. Section 6 contemplates that where an offence under this Act has been committed by a company, firm or other association of individuals, every person who, at the time the offence was committed, was in-charge of, and was responsible to the company, firm or association for the conduct of the business of the company, firm or association, as the case may be, shall be deemed to be guilty and shall be liable to be proceeded against and punished accordingly. More importantly section 7 says that the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matters dealt with in this Act.

The bill is yet to be passed by the lok sabha yet it is an important and much needed legislation on the issue of surrogate advertisements.

It is very clear from the aforementioned existing laws and regulations that any direct or indirect advertising of the prohibited products is not permitted in India.

**Judicial Response To Surrogate Advertising In India:-**

On various occasions the adjudicatory bodies in India have intervened in the matters of surrogate advertisements being projected on the media and directed the companies to withdraw the same with a fine imposed on them. In **United Breweries Limited vs Mumbai Grahak Panchayat**<sup>24</sup>, Mumbai Grahak Panchayat filed a complaint against the appellant as well as Western Railway for having adopted Unfair Trade Practices in prominently displaying/exhibiting false, misleading and surrogate Liquor Advertisements on the coaches of the Western Railway trains and to seek discontinuance of the same along with corrective advertising by the opposite parties to neutralise the effect of the said advertising and punitive damages. United Breweries manufactured Bagpiper, London Pilsner and Derby Special Whisky and Beer. The said advertisement made a claim of "India's No. 1 and the World's No. 3". This description matches with the "Bagpiper Whisky" and not "Bagpiper Soda". There was no Bagpiper Soda in the market. The second advertisement is of "London Pilsner Soda" describing 250 ml. Pint "Soda" available for Rs. 16 and on inquiry, it was stated that 'London Pilsner' has come out with 250 ml. bottle of Beer. The complainant's volunteers had purchased a bottle of 250 ml. London Pilsner Soda beer costing Rs. 16. London Pilsner Advertisement of Railway trains proclaimed " Ab Cold Drink Out". An attempt was made to substitute Cold Drinks with Beer. This was an attempt to induce the young generation to switch over from Cold Drinks to Beer. There was third advertisement of "Derby Special Soda". On inquiry, it was found that there was no Derby Special Soda anywhere in the market and there was "Derby Special Whisky" available with Wine Dealers. These attempts were highly objectionable, deplorable and also patently illegal. The complainant approached the Railway Authorities but they did not pay any heed to their request for stopping the advertisement on the ground that agreements had already been executed. Feeling dissatisfied with response, the complaint was filed before the State Commission against the

<sup>22</sup> Available at - <http://www.who.int/fctc/en/>. Visited on 11<sup>th</sup> February 2018.

<sup>23</sup> Available at - <http://164.100.47.4/billtexts/rsbilltexts/AsIntroduced/surogat%2010317-E.pdf>. Visited on 11<sup>th</sup> February 2018.

<sup>24</sup> I (2007) CPJ 102 NC

appellant and Western Railways seeking discontinuance of Unfair and Deceptive Trade Practice of displaying/carrying the impugned advertisements of Bagpiper, London, Pilsner and Derby Special Soda from Western Railway trains.

Issue with regard to impugned advertisements of Bagpiper Soda, London Pilsner was also taken to the Advertising Standards Council of India. The complaint with regard to London Pilsner was upheld by the Advertising Standards Council of India and the Council held that the advertisement is misleading by ambiguity since the headline, "Ab cold drink out" and the claim of "Rs. 16 only Rs. 3 refundable deposit", is not supportive of the product mentioned- 'pint glasses', and contravened the Advertisement Code. The Council further held that the advertisement is surrogate advertisement for an alcoholic beverage brand and it also contravened the Advertisement Code. Written request was also made to the advertiser to withdraw the advertisements. Similarly, complaint against Bagpiper Soda was also upheld. The mention of the word "Soda" in an inconspicuous manner, while boldly stating the brand name "Bagpiper" with the baseline, "India's largest, World's No. 3", was misleading. It was further held that the advertisement is surrogate advertisement for an alcohol produce brand. Similar request was also made to the Advertiser to withdraw the advertisement.<sup>25</sup>

In **Re: McDowell And Co. Ltd. vs Unknown**, the Monopolies and Restrictive Trade Practices Commission ordered an enquiry on an advertisement that appeared at page 66 in The Illustrated Weekly of India of date November 23, 1986. McDowell and Co. which is engaged in the business of manufacturing whisky, cologne and other products is reported to have inserted and published the said advertisement to promote the sale of whisky manufactured by it though it apparently related to cologne. The advertisement depicted a bottle on which was engraved "McDowell's Diplomat Cologne". The same advertisement carried the picture of Ms. Dimple Kapadia, a film actress. Underneath the picture was the caption "what makes him my choice is his choice . . . Diplomat". The Commission came to the prima facie view that the said advertisement though apparently referred to cologne, left a misleading impression on the readers that the message was in regard to the good quality and usefulness of whisky manufactured by it under the brand name "Diplomat". Furthermore, the caption in the advertisement gave an impression that Ms. Dimple Kapadia liked those people who choose to drink "Diplomat" whisky. It also gave a misleading impression about the quality and usefulness of "Diplomat whisky".

The commission held that the impugned advertisement cannot be held to be a misrepresentation but it is just a matter of "puffing up". Neither the picture of Ms. Dimple Kapadia nor the caption underneath the same can be held to mislead any reader of the advertisement or for that matter a consumer of the product. There is no reference to whisky in the impugned advertisement implicitly or explicitly.<sup>26</sup>

### Conclusion And Suggestions:-

Surrogate advertising is the observation of the double-faced society where we are actually living. Resultantly, we feel that some of the products in market are good and hence can be sold and consumed by the masses but not good enough to be advertised in an open market. When the manufacturers and distributors have potential buyers, advertising has a minimal value as they are already aware of the available products. As per WHO, tobacco claims about 5 million lives every year and the current smoking pattern will claim another 10 million lives each year by 2020. The lacuna lies not in making the laws to ban the advertisement but in the manufacturing of the same. More the restrictions placed on the advertisements, more innovative techniques are developed to overcome the restrictions. No matter how many laws and regulations have been framed, yet the problem is that more than half of the Indian population is illiterate or is unaware of the existence of any laws. Laws and regulations themselves cannot achieve the public goals envisaged by our government. Nor any implementing agency can solely serve this purpose. Various NGO's (like - HRIDAY- Health Related Information Dissemination Among Youth), human resource centres, policymakers, social workers have to come to the rescue of the general masses and make them aware of the reality. Every endeavour must be made to carry out the following recommendations:-

1. Media and film companies should bouycott the sponsorship of their events by liquor pr tobacco brands.
2. Entertainment industry needs to modify its rating guidelines eliminating thereby the tobacco portrayal by the youth.

<sup>25</sup> Available at - <https://indiankanoon.org/doc/1989453/>. Visited on 12<sup>th</sup> February, 2018.

<sup>26</sup> Available at - <https://indiankanoon.org/doc/1809429/>. Visited on 12<sup>th</sup> February 2018.

3. Every film make should be made duty bound to present a certificate as soon as the movie ends that no one from the production team sought to receive anything from any liquor or any other tobacco company or even their agents, just with an intent to promote or build up the TRP of their movie.
4. Producers and exhibitors must run anti-smoking, anti-tobacco and anti-liquor ads that the not sponsored by the manufacturers of such products.
5. The censor board should give an adult rating to movie that depicts smoking or drinking or chewing tobacco.
6. Broadcasters should run health warning messages in between the shows in vernacular languages easily understood even by the illiterates.
7. Curriculum of the schools and colleges must be modified to inculcate healthy living habits among the children from an early age.
8. Amendment of various laws is sought ushering in more transparency in banning surrogate advertisements by the brands under the umbrella of same brand name.
9. Adoption of strict laws penalising the companies which undertake surrogate advertising of the products which are actually not shown in the ad.
10. The role of Advertising Standard Council of India needs to be strengthened to address the complaints from consumers in an efficient manner against the surrogate adverts.

There is no substitute to a healthy competition. All the regulations and laws are imperative in a dynamic market and in a race to capture the maximum market, the companies are tempted to hit the areas by wrongful means. But there is no alternative to a healthy lifestyle even. Hence, the media has to act consciously as it is the reflection of our civilization and culture having a perpetual impact on the audiences, especially the tender minds. Media should have a strong footing against surrogate advertising because no matter how much good it is for the business houses, still it is negative, unethical and immoral.