

## Slogans/taglines: Sure shot way to advertising success?

**LexOrbis** INTELLECTUAL  
PROPERTY  
ATTORNEYS

709/710 Tolstoy House, 15-17 Tolstoy Marg  
New Delhi - 110 001  
India  
Tel: +91 11 2371 6565  
Fax: +91 11 2371 6556  
Email: mail@lexorbis.com  
www.lexorbis.com

By Manisha Singh  
and Raashi Jain,  
LexOrbis



In today's competitive world, companies continuously try to come up with unique advertisements to promote and create awareness of their goods and services. Advertising in India, a country with so much diversity, is particularly challenging as advertisements have to be carefully tailored so as not to offend anyone's sensibilities. They must also meet the criteria set by Advertising Standards Council of India, a self-regulatory body.

In the race to monopolize the attention and interest of consumers, taglines and slogans have acquired a significant position. Though often used interchangeably, a difference does exist between the two. A tagline represents a company's identity, values and business as a whole, and is not changed frequently, e.g. Disneyland's tagline "The happiest place on Earth". Taglines such as Nike's "Just do it" and McDonald's "I'm lovin' it" have become synonymous with the respective companies, forming an integral part of their brand identity.

A slogan is an innovative expression, informing customers about a particular product or service, and can easily change with the coming of new campaigns. In India, slogans such as PepsiCo's "Yehi hai right choice Baby, Aha", which were introduced in 1990s, are still popular among the customers. Such is the power of slogans and taglines that even years after being introduced in the market, they continue to hold the interest and attention of the customers.

While slogans and taglines can play a significant role in promoting a business, a bad choice can do more damage than good. Take for instance the slogan "The perfect beer for removing 'no' from your vocabulary for the night", used by American beer giant Anheuser-Busch for Bud Light, in its "Up for whatever" campaign. The slogan was criticized for encouraging drunken driving and discouraging women from saying no to

unwarranted advances. Ultimately the company had to acknowledge that the slogan had missed the mark, and said it was not meant to condone disrespectful or irresponsible behaviour.

US retailer Victoria's Secret is not new to controversy when it comes to advertisements. In 2014, it ran into trouble when it promoted its "Body by Victoria" personal clothing line using a photo of thin models with the slogan "The perfect body". This created a big uproar as the campaign was seen to perpetuate body shaming and create physical insecurities among women. In response to this backlash, the company changed the slogan to "A body for every body".

In the past few years, businesses have begun to take pre-emptive measures to protect taglines and slogans through intellectual property (IP) laws. IP protection is sought either by registering the tagline/slogan as a trademark and then suing for trademark infringement or suing for passing off in case of an unregistered trademark.

Slogans/taglines fulfil the requirements under India's Trade Marks Act 1999, i.e. they are a mark containing combination of words, capable of being represented graphically as well as distinguishing a person's goods and services from those of others, and are used for signifying a connection in the course of trade between the goods/services and the person having right to use the mark.

In *Anchor Health and Beauty Care Pvt Ltd v Procter & Gamble Manufacturing (Tianjin) Co Ltd* (2014), the plaintiff had sought a permanent injunction and other reliefs to protect its registered trademark "Allround" or the expression "Allround protection", which it was using for toothpaste, against the defendants, who had begun using the marks "All-around Protection" and "Allrounder" for their toothpaste.

Delhi High Court granted an interim

injunction, holding that the plaintiff's mark was protected under the Trade Marks Act. An appeal filed against the interim injunction order was later dismissed as the court did not find any merit in it. The court also observed the difference between marks which are descriptive generally of goods or services, and marks which indicate the particular quality or qualities of a specific product/service, which may be absent in the same product/service being provided by others. According to the court, only the former cannot be registered as trademarks or be protected.

Slogans/taglines cannot be protected under India's Copyright Act, 1957. This was stated by a single judge of Delhi High Court in *Pepsi Co Inc & Anr v Hindustan Coca Cola & Ors* (2001). The judge added that they could be protected under the law of passing off. In an appeal to the division bench, the judge's finding that advertisement slogans did not fall under the Copyright Act was not overturned, although the division bench granted an injunction against the respondent's advertisement, holding that the respondent had copied the theme of appellant's advertisement.

In *Godfrey Phillips India Ltd v Dharampal Satyapal Ltd & Anr* (2012), Delhi High Court reiterated its stance in the above case and stated that "Shauq Badi Cheez Hai", being combination of common Hindi words, would not fall within the category of "artistic/literary work".

Slogans and taglines are an intrinsic part of a company's identity and brand. Whether L'Oréal would have achieved the stratospheric success that it has without its famous tagline "Because you're worth it" is something we can ponder about as consumers.

Manisha Singh is a founding partner of LexOrbis, where Raashi Jain is an associate.