

COMPARATIVE ADVERTISING IN LEBANON: WHERE TO? LEGAL, PROFESSIONAL
AND CONSUMER PERSEPECTIVES.

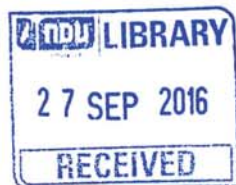
A Thesis
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of the requirements for the degree of
Master of Arts in Media Studies/ Advertising

by

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Spring, 2014



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ABSTRACT

The remarkable success of comparative advertising especially in Lebanon has sparked considerable discussions over the relative qualities and risks. Comparative advertising in the Middle East, European Union and United States has shown application of the rules and regulations of the governments through respecting the law of the community via its influence on consumer purchasing behavior which goes along with hypothesis one.

This study has explored the position of the Lebanese market regarding comparative advertising through taking the opinions of some legal experts and practitioners in the field. Correlating legal professional and consumers' opinions proved the fact that having a clear advertising law will make the practice more accepted to consumers, aligning with hypothesis two.

The assessment of comparative advertising was done through document analysis of publicly available literature review and primary data collection through a survey conducted on Lebanese consumers and interviews on marketers and legal experts. The results were drawn from comparative analyses. These results were shown in comparative tables which mostly fit the objective of this research study for understanding comparative advertising theories and practices in Lebanon, to come up with recommendations and scopes for further researches directing the Lebanese market to meet the right and legalized standards in their activities.

What gives a special flavor to this thesis are the examples of humorous comparative ads from Lebanon and the world and the open end highlighting the value of ethics in business and more specifically in comparative advertising.

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1.1. Importance of the Topic

Advertising have become a major part in our life. They influence people lives in a way or the other and to a certain extent control behavior of customers and consumers toward goods and services. Every day, without a prior notice, one is exposed to advertising, some of them are to promote social events; some others endorse political issues not to forget the cultural ones representing cultural causes; and the ones focused on business promotional activities.

The main objective of advertising is to attract attention of potential consumers and public about the brands, endeavors acts or services. In a comparative environment, the main target is to highlight the added value that the brand or service offers to the consumer that competitive products do not have. Comparative advertisement is advertising where a party promotes his goods or services by comparing them with goods and services of other parties. This is usually done to outline or compare goods or to propose that a given product is greater or better quality. New brands profit most from comparative advertising (Pinkeshwar, 2013).

Any advertising, which explicitly or by implication, identifies a competitor goods or services offered by a competitor, is called Comparative Advertising.

"Comparative advertising is defined as advertising that compares alternative brands on objectively measurable attributes or price, and identifies the alternative brand by name, illustration or other distinctive information"

(Federal Trade Commission, 1979)

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After the investigation has been conducted by the commission's staff of industry trade association and the advertising media regarding their comparative advertising rules, some policies were observed. Some of the trade policies have stated words that could be read as discouraging the use of comparative advertising. This rule shows the commission's situation that industry self-regulation should not organize the use by advertisers of honest comparative advertising.

Commission policy in the part of comparative advertising supports the recognition of competitors, but requires directness, and, disclosure to eliminate dishonesty of the customer. Furthermore, the straightforward comparative advertising should not be controlled by broadcasters or self-regulation units. What the commission has supported is to utilize brand comparisons where the bases of evaluation are recognized. Comparative advertising encourages good improvement, and it is able to lower charges in the market.

Some industries codes prohibit practices of comparative advertising such as (disparagement," "disparagement of competitors," "improper disparagement," "unfairly attacking," "discrediting,") [44 FR 47328, Aug. 13, 1979].

The commission has held that "disapproving advertising" is acceptable so long as it is straight and not unreliable.

"Respondents from making truthful and no deceptive statements that a product has certain desirable properties or qualities which a competing product or products do not possess. Such a comparison may have the effect of disparaging the competing product, but we know of no rule of law which prevents a seller from honestly informing the public of the advantages of its products as opposed to those of competing products."

(Federal Trade Commission, 1979)

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Comparative advertising can be direct or indirect. In direct comparative advertisements, the competing products either are clearly named or can be specifically recognized (by photos, images or trademarks). At the contrary, indirect comparative advertisements do not directly refer to competing brand names.

Practices of comparative advertising in the market place are often considered aggressive. The most affected sectors by laws and regulations on comparative advertising include: food, retail, motoring and airlines. Well-known examples of direct comparative ads engage Coca Cola and Pepsi, Burger King and McDonald's, Unilever and Procter and Gamble (Barigozzi & Peitz, 2004).

In Lebanon, the use of Comparative Advertising is:

“An issue new but still in Grey stage in Lebanon and other Middle East countries.”

“In the past, mentioning a competitive product was considered not only bad taste but also poor strategy.”

(Darouni, page 232-233, 2006)

In Lebanon, saying how your goods are better than those of competitors is a successful way to position yourself in the market and thus can lead to higher gains. However, it can lead to lawsuit. This is the result and actually the rules of directing the competitor in a negative way. In addition, the more booming the operation, the more it is likely to take revenge from the competitor.

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If you want to compare your competitor's products to yours, you have to first evaluate if it appeals the hazard of being sued, and second lessen those risks by abiding by the law.

Also some of the reasons to not mention the competitive products are:

- a- **You possibly will be giving gratis advertising for your competition.**
- b- **You may start a small conflict you are not ready for.**

"In contrast, comparative advertising existed only during the ottoman rule, and the penalty at that time was to charge the offender the equivalent of \$5 dollars by today's standards"

(Darouni, page 232-233, 2006).

In the Middle East, the concept of comparative advertising is not yet welcomed in the advertising and marketing profession. If this concept is well applied it will stop false claims, which are greatly used in the region. In addition, comparative advertising help the consumer by presenting information which can benefit him in making a logical buying behavior (Darouni, page 233, 2006).

Comparative advertisement can be fairly used for the effective and successful promotion of the products and service of a trade. But conversely, if it is not done according to rules, it could result diverse troubles like passing off, unfair trade, infringement of trade mark.

1.2. Need for the Study

Comparative advertising can be helpful to the marketplace. It tells consumers the differences in products and permits competitors to pinpoint why the consumer should select a product over another product. The Federal Trade Commission (FTC) is a bipartisan federal agency with a unique dual mission to protect consumers and promote competition (Retrieved from www.ftc.gov). Its strategy in the area of comparative advertising encourages the naming of, or reference to, competitors. But it requires clarity and, if necessary, disclosure to avert deception of the consumer (Jeff, 2010).

Comparative claims are changeable in nature. They may directly name a competitor or indirectly refer to him. They may emphasize positive comparison or negative comparison between the products. They may say that the advertised product is “better than” (superiority claims) or “as good as” the competitor’s (equivalence or parity claims). The purpose behind this idea is to disallow misleading comparison (Romano, 2005).

What is interesting in comparative advertising and triggers the comparative analysis is that there is an agreed forum on legal consequences that affect the market in terms of consumer insight and a competitor right to sue another competitor for fault under the law which differs from one country to another.

In Lebanon, we usually use the indirect comparative advertising where the competitor may be recognized indirectly such as the advertisement of Ariel and Persil (TV Advertisement Of Persil by Mona Abou Hamza, a very well-known TV presenter) by eliminating the voice of the women saying the competitors name and by hiding the

trademarks and the image of the products so that consumers cannot see what is written on it.

That is why it is difficult to practice anti-competitive practices (i.e. The Telecommunications Regulatory Authority TRA) unless the parties involved have significant market power or government backing, for this reason company mergers are often examined closely by government regulators to avoid reducing competition in an industry. For this reason countries must have competition laws to prevent anti-competitive practices and government regulators to aid the enforcement of these laws.

Comparative advertising, if done correctly is a pro-competitive activity that the courts should not actively reject. Those who venture into the world of comparative advertising should progress with care. Getting it wrong can lead to serious consequences for a given business, including the need to pay damages to a competitor, or buy media spaces on time for the embarrassing and costly exercise of publishing corrective advertising.

1.3. Objectives of the Thesis

The purpose of this thesis is to explore some legal cases and views of practitioners in advertising towards comparative advertising in Lebanon and how such practices may affect the Lebanese market and consumers.

This paper will study some comparative advertising cases in Lebanon and how the Lebanese courts have dealt with them. Dealing with those cases and investigating how consumers attend this kind of comparison will be addressed as well.

Comparative advertising has become an effective tool in targeting a big number of consumers through advertisements that distinguish products, prices and qualities to alternative brands. In other countries, if comparisons are evidently identified, truthful, and non-deceptive, comparative advertising can be a remarkable advertising tool. Not to forget that this advertising method has its possible drawbacks. A competitor's false or deceptive campaigns have the potential to cause serious damages to products, marketers and producers.

This study deals also with the impact of comparative advertising in Lebanon and its impact on consumers and competitor. It will shed light on the role of governmental and economic side ways to measure the impact of comparative advertising on the public, companies and the best way to apply the law in Lebanon.

The literature review in this thesis should show the effects of this technique on consumers.

Many governments around the world use regulations to control false, deceptive or misleading advertising; what about the Lebanese case?

Research Question:

- What is the effect of comparative advertising on Lebanese Consumers?
- What are the Lebanese legal experts' opinions about comparative advertising?
- What are the determinants of the best practices related to this technique in Lebanon?

- Is it possible to create a formula balancing between law, ethics and commercial practices in Comparative advertising?

1.4. International Perspective

Advertising has a long history in the US country and has been part of their culture. Federal advertising legislation is found in two key laws: the Federal Trade Commission Act and the Trademark (Lanham) Act (Legal Information Institute, 1992), the federal trademark statute disallows false designations of origin and false or misleading descriptions of facts.

The FTC (Federal Trade Commission) released its “Statement of Policy Regarding Comparative Advertising” in 1979. The FTC stated that comparative advertising where the comparisons are clearly identified truthful and non-deceptive can be very useful and important information to consumers and can help them to make the best purchasing decisions. In addition, the FTC has showed that advertisements attacking are permissible so long as they are truthful. The FTC also has stated that it estimates comparative advertising in the same way it estimates all other advertising and does not need a higher standard of substantiation by advertisers for comparative claims (Federal Trade Commission, 1979).

On the other hand, directions related to comparative advertising are regulated by a series of EU regulations. The uses of comparative advertising were rare in UK because of legal difficulties brought and the risk of an action for trademark infringement.

When they have started to implement the Trade Marks Act 1994 (TMA) in UK which allows the use of a third party’s registered trademark subject to certain disorder,

comparative advertising has become more extensive, particularly in fiercely competitive markets, such as the mobile telephone market and indeed the telecom industry mostly.

Comparative advertising is also found in The **Institute of Practitioners in Advertising** (IPA) part of the UK Advertising Association which is the trade body and specialized association for agencies in the promotion, and marketing communications big business of UK, covering the direct marketing.

The role of the IPA is to promote the value of organizations. It works in collaboration with some associations to define the highest standards of professional practice.

Comments on comparative advertising regulations by IPA were that:

“There is a need for advertising agencies to comply with seven golden rules; Common standard for comparative advertising across the European Union; Concerns raised about the absolute prohibition on discrediting or denigrating a competitor's products.”

(Jacobson, 2000)

Also, The Advertising Association (AA) is the single voice in the UK for all sides of the advertising and promotions industry.

The Advertising Association in UK considers that advertising should be official. They take into considerations the key directives in this regard specifically the deceptive and comparative advertising directive and the unjust business act Directive. They agree with the requirement to care for shoppers and recognize the significance of customer's belief, which is important to creating a jointly valuable connection between trader and consumer (Camozzi, 17January 2014).

Also, they believe that European rules should be evidence-based and balanced, particularly when balancing the real or apparent risk to consumers next to the benefits of advertising, commercial communications, and well-funded media.

“At what level consumer protection measures should be adopted depends on:
- *Whether there is, or could be in future, a single market currently limited because of consumer concerns;*
- *Cost/benefit analysis (impact assessments) of taking action at EU or national level – or not at all.”*

(Camozzi, 17January, 2014)

Moreover, the National Advertising Division (NAD) applies a higher standard to advertising privileges that impair a competitor’s goods or services. Specially, the NAD has stated that “claims that expressly or implicitly disparage a competing product should be held to the highest level of scrutiny in order to make sure that they are truthful, accurate, and narrowly drawn.” (Sherwin-Williams Company, 2002).

In most European Union countries, “comparative advertising means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor” (Petty and Spink, 1995).

According to the recent European legislation: “comparative advertising is permitted and acceptable only if it is not misleading” (Barigozzi & Peitz, 2004).

The following section will study how some European countries and the UAE deal with comparative advertising.

1.4.1. Comparative Advertising and the European Union Law

The law of comparative advertising has been applied by the European Union. Its organizational establishment is based on [Article 4 lit. a, lit. f TFEU (Treaty on the Functioning of the European Union)].

This corpus of regulations has two diverse types of instruments at its disposal – “Regulations” and “Directions.” “Regulations” are rules that relate in every Member State straight without any act of nationwide acceptance [Article 288 II TFEU].

“Directions” are guidelines which have to be applied by national acts of legislation [Article 288 III TFEU].

The option of shape and means of policy implementation stay left up to the nationwide establishments. But, German rules and policies have to encounter the purpose of the Directive. [Directive 97/55/EC of October 6, 1997] introduced the first principles of comparative advertising in Europe.

Only under certain conditions, specified in [Article 4 lit. a – lit f] of this instruction, comparative advertising might be legalized. Thus, comparative advertising is acceptable in limited conditions (VERKADE, 1992).

In France the customer Protection Act 1992 [*Loi n 92-60 du 18 janvier 1992 renforçant la protection des consommateurs, J.O. 21 January 1992.*] has reversed France's habitual position vis-a-vis comparative advertising.

From now on, comparative advertising is authorized if certain circumstances are satisfied, i.e. that it is: If it's fair, true and not misleading. Also that's limited to an objective evaluation among important characteristics of goods and services of the same character.

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When the comparison related to values and prices of the goods are identical; they are sold in comparable conditions and the announcement mentions the time during which the advertiser maintains his personal prices.

The evaluation by the advertiser is very important at the first stage, it will not present the products or the services as the replication of branded products or services; and the advertiser is able to validate the claims before posting the advertisement he communicates it to the vendors referred to.

In Belgium, they have allowed the comparative advertising, based on the principle that this kind of advertising promotes competition in terms of quality and price, which benefits consumers. The law in Belgium forbids comparative advertising only if the other vendor is recognizable.

In Netherlands and Italy,

"Comparative advertising is any form of advertising in which a competitor or the goods or services of that competitor are expressly or implicitly referred to"

(Dutch law)

Such advertising is permitted if a number of conditions are met. Previously, these conditions were determined by legal precedence, and then included in the regulation.

Comparative advertising is permitted if it complies with the following conditions:

Comparative advertising should not be misleading and should only compare things that can be compared; in addition it should not confuse the consumer and reflect

negatively on the competitor. The most important is that comparative advertising should not make the comparison with the aid of copies or imitation goods. (Dutch law) (2001-2011 D.P. Ahuja & Co., India).

Law does not prohibit comparative advertising, as long as it is not misleading. The Netherlands, however, complies with the (Benelux Uniform Trademark Act) which prohibits the use of another's trademark in advertising.

(Article 10 of Spanish 1991 Law) on Unfair Competition allows some comparative advertising but forbids comparisons that communicate to features that are not similar, related or comparable.

“Spain was being soft towards comparative advertising a lot more than other European Nations”

(Kirmani, 1996).

In contrast, Portugal strictly limits the practice of comparative advertising.

In 1991, Greece similarly adopted a Consumer Protection Law that allows the limited use of comparative advertising. Historically, Portuguese regulations on unfair competition have not expressly referred to comparative advertising. They have tended to forbid all promotion that pursues to harm the reputation of a competitor. In 1990 the establishments applied the Advertising Code; in particular this legislation banned such advertising where:

The comparison was not based on important, linked characteristics of the goods and/or services; or the advertisement compared a product with dissimilar products.

Revised code: [Article 16] establishes the situations in which comparative advertising is permitted.

“Comparative advertising must identify, explicitly or implicitly, a competitor or the goods and/or services offered by a competitor “

[Article 16 (1)].

This definition is wide, as an advertisement may identify a challenger, or its goods and/or services, without stating an understandable comparison of the goods and/or services.

In particular, [Article 16(2)] provides that to be permissible, comparative advertising should not be deceptive. Moreover, this kind of marketing must associate objectively one or more certifiable and representative features of the goods and/or services (Garrigues, December/January 2010).

In Denmark, usually they do not forbid comparative advertising specially if it is not misleading or disparaging.

A small number of countries, especially Germany do not welcome comparative advertising and were in opposition to the new directive which allowed it, when this type of advertising was regarded as needed.

The directive itself contains individual conditions that must be satisfied if comparative advertising is to be measured officially. According to the standards, which contain the necessities set out in the Directive, comparisons may be among goods that meet the same need or fulfill the same purpose.

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Furthermore, only verifiable features or the price of goods may be compared, whereas the comparison must be with no disparagement. Also there must be no risk of misunderstanding between different goods (Mann, 2000).

On January 18, 1992, the French adjusted their civil code to permit comparative advertising as long as it is “true, and not misleading to consumers.”

With the stated objectives of encouraging competition, France since 1986 has known the validity of comparative advertising. However, this advertising, Relating goods or services with those of an explicitly or implicitly predictable competitor, is lawful only if:

1. It is not false,
2. It related to services that achieve the same wants,
3. It objectively compares one or more characteristics of these goods (price)

Comparative advertising is not general in France since it has often been struck down as disloyal. The courts have presented that the comparison relates to goods or services which are in fact substitutable and that the advertiser did not dishonor or disparage its competitor or take unfair advantage of its reputation. (Bryan Cave, Paris, January 22, 2013).

The status in the United Arab Emirates is that comparative advertising is lawful under the condition that such advertising does not lead to unfair competition.

Comparative advertising by itself is not forbidden by rule, knowing that a predictable advertisement complies with the requirements positioned by laws like the Consumer Protection Law (Al Tamimi & Company, 2013).

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As a summary, below is the status of comparative advertising in different European countries:

- Belgium forbids,
- Netherlands has no complete prevention,
- Spain implemented a more tolerant position,
- Portugal permits but severely limits,
- Greece agrees the partial use of comparative advertising,
- Denmark lets comparative advertising provided.
- Germany did not wanted comparative advertising in 1994,
- Comparative advertisement was relatively uncommon in the UK

Advertisement being a commercial dialogue which is a part of the freedom of speech is guaranteed under [article 19(1) (a)] of the Constitution Federal Trade Commission in US and EU both promoted comparative advertisement because it enables consumers to reach more informed and rational purchasing decisions, increasing customer information of the brand in the process.

1.5. Thesis overview

The study starts with a general overview of the comparative advertising and its international legal perspective. Chapter I stresses on the purpose, importance and objectives of the paper.

Chapter II goes over the literature review of different previous studies made on this subject and the different business models applied on the comparative advertising assessment in different countries worldwide. The researcher consolidates the findings of

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different studies from multiple perspectives (Legal, economic and consumer) and applies them along with the business models on Lebanese comparative advertising to be able to draw implications and effective contribution.

Chapter III deals with the methodology of the paper. Comparative tables for USA, EU and Middle Eastern countries and a competitive profile matrix are necessary to position the Lebanese comparative advertising and analyze its current status, competitive advantage regarding other countries of the region especially the direct method.

Chapter IV elucidates the survey and its results through tables and explanations. Chapter IV results are processed in chapter V.

Finally, Recommendations are given on the short and long term and are listed in chapter V to end with a general conclusion.

II- LITERATURE REVIEW

2.1. Introduction

This thesis explores Legal, Economic and Consumer's perspectives towards comparative advertising. The author went through available secondary data tackling the three perspectives and extracted what is common between them and summarized them in the parts to follow.

Nowadays advertisers are using comparative advertising heavily; the number of empirical studies analyzing the effectiveness of this type of advertising is growing (Grewal, Kanavoor, Fern, Costley & Barnes, 1997).

Comparative advertising effectiveness is one of the major controversial issues since the Federal Trade Commission allowed advertisers to name their competitors or brands (FTC, 1979). This kind of advertising is more effective than traditional one in getting more attention, recall and claims (Farris & Wilkie 1975) but comparative advertising is frequently considered more confusing, less credible and no more convincing than non comparative ads (Belch 1981).

The objective of this thesis is to discover the several issues related to the evaluation of the effectiveness of comparative advertising. Referring to numerous recent studies as reference points (Etgar & Goodwin, 1978), we have thrived to consolidate the common results about comparative advertising research.

Few studies have found that it is unsuitable to use comparisons in communication strategies based on differentiation. In fact, (Grewal et al., 1997 and Manning, Miniard,

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Barone and Rose, 2001) reported favorable results in this concern (Thompson, March 2006).

However, despite the presence of conflicting results in the literature concerning the effectiveness of comparative advertising, direct comparative remained, creating a gap between scientific evidence and practice. All other conditions being equivalent, the problem remains whether comparative advertising is more effective than non-comparative advertising as a part of a differentiation strategy.

2.2. Legal Perspective

2.2.1. Comparative advertising in the US

In the US, two important laws were found in the federal advertising: the Federal Trade Commission Act and the Trademark (Lanham) Act (the federal trademark statute prohibiting false designations of origin and false or misleading descriptions of facts). The Federal Trade Commission was founded in 1914, its mission is to protect businesses against unfair practices (Barigozzi, Garella & Peitz, 2009).

In 1922, the Supreme Court ruled that the FTC can regulate advertising. In particular, this decision allowed the FTC to regulate all aspects of false labeling and unfair methods of competition in advertising (Barigozzi, 2004).

Comparative advertising became very important in the 1960's and 1970's. From the beginning, the FTC has stated that comparative advertising is a way to convey information to consumers (Barigozzi, 2004).

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In 1963, the FTC made an order with respect to comparative advertising:

“So as to permit companies to make Truthful and non-deceptive statements that a product has certain properties or qualities which a competing product or products do not own. Such comparison may have the effect of disparaging the competing product, but we know of no rule of law which prevents a seller from honestly informing the public of the advantages of its products as opposed to those of competing products”

(Bargozzi, 2004).

The relatively sudden rise, during the 1970s and 1980's, in the use of explicit or direct comparisons in advertising in the US, was a result of a Federal Trade Commission assessment of such a practice as a mean of improving competition. The FTC states:

“ Comparative advertising, when truthful and non-deceptive, is a source of important information to consumers and assists them in making rational purchase decisions. Comparative advertising encourages product improvement and innovation, and can lead to lower prices in the marketplace.”

(FTC, 1979)

Competitors and consumers are allowed to contact the FTC for controversies arising from comparative advertising.

Since 1974, plaintiffs started ordinary court actions applying to the 1946 Lanham Act (Leighton, 2005). These companies have found that section 43(a) of the Lanham Act (although it does not mention advertising) holds in the words of (Bixby & Lincoln 1989) “the key to getting more expedient and decisive action taken on their complaints. [...] Section 43(a) of Lanham Act was largely intended to clarify trademark, “palming off”, and other trade law issues. However, it has been used as a basis for private litigation against companies promulgating allegedly false comparative advertising.”

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The modified Section 43(a) of the Lanham Act states that “any person who, on or in connection with goods or services, uses in commerce any:

- word, term, name, symbol, or device, or
- any combination thereof, or
- any false designation of origin,
- false or misleading description of fact, or
- false or misleading representation of fact, which in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person’s goods, services, or commercial activities

He shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

Plaintiffs typically have used section 43(a) of the Lanham Act rather than the FTC Act “because (1) it may give them immediate relief from competitive advertising by means of an injunction, (2) it may oblige the competitor to run corrective advertising, and (3) it may allow the plaintiff to collect damages from the defendant” (Bixby & Lincoln, 1989).

2.2.1.1. Legal Practice: Standards of Substantiation

An important question is whether the standards of justification must be higher using comparative advertising compared to other forms of advertising that claims about product features.

“On occasion, a higher standard of substantiation by advertisers using comparative advertising has been required by self-regulation entities. The Commission evaluates

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comparative advertising in the same manner as it evaluates all other advertising techniques. The ultimate question is whether or not the advertising has a tendency or capacity to be false or deceptive. This is a factual issue to be determined on a case-by-case basis. However, industry codes and interpretations that impose a higher standard of substantiation for comparative claims than for unilateral claims are inappropriate and should be revised"

(FTC, August 13, 1979)

Two important restrictions can be made:

1) Competitors usually take movements against comparative claims and they also do so against rights that are not comparative, therefore the FTC statement of non-discrimination may not agree with legal practices.

2) The FTC statement forbids the use of comparative advertising if it is the only way to communicate product content to consumers. This is the condition if a competitor's product serves as a reference opinion for consumers because consumers do not have an understanding for whole content statements (Grewal et al, 1997).

"To state a cause of action for misleading advertisement under the Lanham Act, a plaintiff must establish the following:

1) The defendant has made false or misleading statements of fact concerning his own product or another's;

2) The statement actually tends to deceive a substantial portion of the intended audience;

3) The statement is influential in that it will likely influence the deceived consumer's purchasing decisions;

4) The advertisements were introduced into interstate commerce; and

5) There is some causal link between the challenged statements and harm to the plaintiff" (Leighton, 2005).

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“When materiality has to be proven under the Lanham Act, it usually must be shown that the claim at issue would likely affect purchase decisions of a significant percentage of the intended audience” (Leighton, 2004).

A survey was made about how consumers understand the claim and subsequently exercise purchasing choices. Note that even if the claim is not precisely false it is liable to prosecution if it provides consumers with a false perception of reality. In other words, the ad’s content must be true, but also the overall impression given to consumers matters. In particular, what matters is how consumers interpret the advertisement (Leighton, 2004).

In conclusion, two conditions are possible. An advertisement may have a literally wrong statement but not be deceptive in its overall impression. Or every statement in an advertisement may be literally true, but the clear impression given by the advertisement can be misleading.

“Most cases involve advertising that contains literally true statements when viewed out of context but, as presented, leaves a false or deceptive net impression.”

(Wood, 2007)

The following is an exceptional example about misleading statements and false claims on a very high level in the US:

Main conflict between President Reagan and Ralph Nader (consumer advocate):
Consumer advocate Ralph Nader called on a former New York candidate for governor Monday to pay up on a \$10,000 bet that President Reagan would break a campaign promise and raise taxes.

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“You lost the wager”, Nader wrote in a letter to Lewis Lehman, noting that Reagan signed legislation last month to increase corporate taxes by several billion dollars to finance expansion of the Superfund toxic waste program.

Lehrman, who made the wager with Nader in a joint television appearance in 1984, before the presidential election, refused to pay, insisting that he did not lose the bet.

“The truth of the matter is that the President has provided a major overall tax reduction for the American people, and that is the bottom line,” said Lehrman, citing the tax reform legislation signed by Reagan last month.

Nader rejected that argument, noting a congressional study found the tax reform legislation, as requested by Reagan, would be “revenue-neutral,”

Reagan vowed during the 1984 presidential campaign against Democrat Walter Mondale that he would not allow a tax increase in his second administration (United Press International, November 04, 1986).

It is noteworthy that Ralph Nader formed a group of young Lawyers in 1968 (CSRL) to look into the Federal Trade commission that was a sleepy bureaucracy entrusted with protecting consumers from shoddy products, fraudulent business practices and deceptive advertising. The young but resourceful task force members hanged around the hallways of the Commission talking with staffers and top officials, and discovered corruption and neglect. In January 1969 the Nader FTC report was released, it eventually triggered a major revamping of the FTC headquarters and its field offices. As if to signal its transformation, the Commission soon thereafter launched a major investigation of the structure and practices of the food industry (History of Center for Study of Responsive Law) and (Posner R., 1969)

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One more legal authority is the National Advertising Decision:

The National Advertising Division is a self-regulatory body that regulates the respect of advertisers. Comparative advertising troubles brought to the NAD's awareness obtain thorough analysis by highly competent attorneys who apply precedent in reaching a purpose of whether the advertising claims at thing are true, and valid.

One of the most important benefits of using the NAD procedure is the capability to obtain a systematic review on the qualities in only a fraction of the time necessary for legal actions.

Alert State/Federal Regulators

Issue with comparative advertising always can be brought to the attention of controllers in the wish that the FTC will use their legal authority to end a wrong act and behavior. Complaints to those who state rules and regulations can be made free, and there are many attorneys who have the skills that will enable them to recognize the suggestion of your complaint and accurately assess the probable for customer destruction.

By emphasizing on the importance of comparative advertising, once can state that comparative advertising can be beneficial to the market. It tells clients the variety in products and allows competitors to underline why the consumer should choose its product over the other product. The Federal Trade Commission's rule in the part of comparative advertising encourages the identification of competitors.

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Positive policies about comparative advertising are differentiated by trademark proprietor concerns that competitors are using their names and symbols to support the competitor's goods or services. (John E. Villafranco, January/February 2010).

'Visible' Versus 'Invisible'

Judges have different opinions on how they deal with these cases because of the management of "invisible" versus "visible" trademark use on the Internet. Noticeable usage of another company's brand is when a company uses a straight link to competitor's website using another company's trademark that is noticeable to the buyer.

Invisible trademark is when trademarks are used in unseen text, and banner. Customers do not see the use of the trademark.

Comparisons Must Be Honest and Accurate

The use of visual comparative advertising is valid as long as it does not contain misrepresentations or missing information intended to mislead the consumer. Protected use is important because any mistakenness will be presented by the competitor in a claim that use of its trademark is an attempt to make confusion.

When the organization makes comparison to competitors, the firm must know that the comparison is comparable. More information such as mass should not be difficult for the consumer to find.

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(Pay-per-click) advertising using comparisons needs to be carefully crafted to keep away initial-interest uncertainty. If a company uses the trademark of a competitor in its advertisement, it needs to clearly point out what the basis of the advertisement is, and illustrates that it is comparative advertising. An advertisement that shows a competitor's brand cannot have deceptive words that make the buyer think the ad is associated with the competitor's trademark (Jacobson, 2010).

The majority of the states in the US have their own anti-dilution laws which sometimes are stricter than the corresponding federal law. Besides, the Court of Appeals for the Second Circuit of New York confirmed a lower court's injunction excepting the comparative advertising because it violated New York's trademark anti-dilution statute.

2.2.1.2. Legal Practice: Damages

Section 35 of the Lanham Act permits plaintiffs to seek a number of harms: lost profits, finding loss business, lawyers' fees, and consumptions. In fact, to claim rights, a plaintiff must show that the ad is deceptive and consumers were actually deceived by the defendant's false advertising and that there was a straight reason or link between the unproven false advertising and the damage of the plaintiff. "Yet, in several cases, the courts have dispensed with the requirement that actual deception be proven where the defendant's conduct was found to be willful" (Raymond, 2004). Therefore, when an advertisement is not delivered properly, disciplinary damages can be awarded. Anyway, damage awards have not been popular in Lanham Act cases.

Only few courts decide to provide for damages awards in false advertising cases and only little cases refer to comparative advertisement (Bargozzi & Peitz, 2004).

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The law office of Arnold and Porter refers to the difficulty of proving damages.

Other authors argue that the courts are doubtful towards comparative dues in litigations concerning trade mark infringement or malicious falsehood.

"Judges take the view that the public is neither gullible nor particularly trustful of advertising. Even if a cause of action is established, judges take some action convincing that a comparative advertisement has caused any damage".

(Swan, 2000)

2.2.2. Comparative Advertising in the EU

As known, comparative advertising is a smart and attractive marketing tool. It rises product and price transparency, it offers the consumer useful information and opens up new markets. Many Americans firms have been using this marketing strategy for long periods while in Europe comparative advertising has been used carefully and not for a long time. The reason for this could be that comparative advertising is rarely permitted in EU States. The goal of this study is to verify the legal requirements of comparative advertising and thus to encourage businesspersons to use this marketing tool in Europe (Thress, 2011).

Several European Union members do not consider it a good taste. So they either restrict the practice of comparative advertising. The European commission has been trying to modify this attitude. The commission defines comparative advertising as any advertising which explicitly or by implication identifies a competitor goods or services of the same kind offered by the competitor. This indicates why the Commission

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emphasizes the value of better information for consumers. For this reason the commission tries to support one type of competition which would benefit both the consumer and the advertiser. Finally the commission seeks to match the laws of the member states in order to achieve the development of a single market.

The European commission stated that this type of advertising is only permitted when it is not confusing. It can be an official way of telling consumers what is in their benefits. Therefore, the comparisons should:

- 1) Share goods and services which meet the same needs or are intended for the same purpose;
- 2) Share products with the same description of origin;
- 3) Deal neutrally with the material, features of those goods or services (price)
- 14) Evade making uncertainty among traders, and should not imitate or take advantage of the trade mark or trade names of a competitor (The European Parliament Council, 2006).

2.2.2.1. Comparative Advertising and the Law of the European Union

The European Union has unified the comparative advertising law. Its legislative underpinning is based on Article 4 TFEU (Treaty on the Functioning of the European Union). This body of legislation has two types of instruments at its disposal – “Regulations” and “Directives.” “Regulations” are rules that apply directly without any act of national acceptance (Article 288 II TFEU). “Directives” are strategies which have to be applied by national acts of legislation (Article 288 III TFEU). Choosing the right methods of policy implementation remains left up to the national authorities.

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However, German regulations have to meet the objective of the directive of the 6th of October, 1997, that presented the first standards of comparative advertising in Europe.

Only under certain circumstances, comparative advertising is permitted in very limited circumstances (Thress, 2011).

2.2.2.3. Comparative Advertising and its Legal Requirements

The legal definition of comparative advertising by European Union is:

"Any advertising which explicitly or by implication identifies a competitor goods or services of the same kind offered by the competitor"

(Article 2 (c) Directive 2006/114/EC)

The commission emphasizes the value of better information for consumers. It values increased competition which would benefit both the consumer and the advertiser. Finally the commission seeks to match the laws of the member state in order to achieve the growth of the market.

The legal definition of comparative advertising in the United States is:

"Advertising that compares alternative brands on price or other measurable attributes and expressly or impliedly identifies the alternative brand by name, illustration, or other distinctive information."

(FTC, 1979)

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What is stated by FTC is where the comparisons that are clearly identified, truthful, and non-deceptive can be a source of useful and important information to consumers and can assist them in making rational purchasing decisions.

Comparative advertising is already present when a competitor is made visible in a manner that makes it identifiable. Under Article 4, under which comparative advertising is permitted, “if the advertisement contains a comparison in the form of an evaluative or equivalence assertion.”

1) Promoting a Counterfeit

An unresolved issue concerns the question whether the marketing of a counterfeit product meets the definition of “comparative advertising.” Regarding its legal definition, comparative advertising is already present if it explicitly or by implication identifies a competitor goods or services offered by a competitor. In the case of promoting a counterfeit these requirements appear to be fulfilled, in particular if the original brand is well known. On the other hand - as mentioned above - the definition of “comparative advertising” should be extended to the fact of the existence of the comparison. Promoting a counterfeit as such cannot be regarded as “comparative advertising” in the legal sense.

Even if consumers recognize the original manufacturer, the comparison will not be part of the advertisement itself. In this regard, national associations with a competitor or the goods or services offered by a competitor do not comply. However, this dispute can only be resolved by the ECJ.

2) Checklist of Legitimacy

The question whether comparative advertising is present has to be distinguished from the question concerning its legal requirements and the conditions under which comparative advertising is permitted.

Article 4

Comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:

- a) It is not misleading, within the meaning of Articles 2(b), 3 and 8(1) of this Directive or Articles 6 and 7 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (“Unfair Commercial Practices Directive”). (See Explanation in Appendix B)
- b) Do not reproduce a competitor’s logo or other artwork as this could give those grounds for a copyright infringement claim.
- c) It compares goods or services meeting the same needs or intended for the same purpose. (See Appendix B)
- d) It objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price. (See Appendix B)

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- e) It does not discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor. (See Appendix B)
- f) For products with designation of origin, it relates in each case to products with the same designation. (See Appendix B)
- g) It does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products. (See Appendix B)
- h) It does not present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name. (See Appendix B)
- i) It does not create confusion among traders, between the advertiser and a competitor or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor. (See Appendix

(EC, Article 4 Directive 2006)

2.2.2.4. Consequences in Case of Infringement

Infringement of the Directive's rules may be faced with several demands arising from the law. Article 5 provides "Member States shall ensure that adequate and effective means exist to combat misleading advertising and enforce compliance with the provisions on comparative advertising in the interests of traders and competitors. Such means shall include legal provisions under which persons or organizations regarded under national law as having a legitimate interest in combating misleading advertising or regulating comparative advertising may:

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- a) Take legal action against such advertising.
- b) Bring such advertising before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings.”

As it is generally known, in Europe, comparative advertising is original and legally permissible marketing tool. Applying the same rules in all the state in Europe by the European Union strategy is a must.

The commission seeks to encourage comparative advertising, declaring that the right to consumer protection includes the right to information as among the basic right of customers. Furthermore, the commission states that comparative advertising when it compares relevant and verifiable details may be a legitimate means of informing consumers to their advantages (Kirmani, 1996).

The amended proposal presented by the commission was headed for the harmonization of member's state's laws on comparative advertising.

In general, the need for a cohesive EU comparative advertising policy remains. Even if the amended suggestion is not adopted the court has shown itself to be in favor of liberalizing comparative advertising restrictions. Moreover, even if the court constantly rules to support the lifting rational restrictions, its ruling may create a problem of absence of a unified EU policy.

2.2.3. The Practice of Comparative Advertising in the MENA Region

Comparative advertising is rarely used in Arab countries. However, in some countries, it is more likely that the use of comparative advertising is perceived as an act of unfair competition simply because any type of comparison between goods and services of different parties may carry with it some considerable risks. (Saba & Co Intellectual Property, 2011)

Furthermore, there may be some factors that might influence the presence of comparative advertising in our region; for example: In Saudi Arabia and Kuwait, comparative advertising is forbidden simply because it does not fit with the provisions of the Sharia'a Law.

Below is a comparative table of Comparative Advertising Law in some countries in the MENA Region:

Table 1


Comparative Study of Comparative Advertising Law in the MENA Region

Country	Article	Details
Morocco	Article 3 of Audio-Visual Communication Law no. 03-77	The publicity which contains denigration of an enterprise, an organization, or of an industrial, commercial or agricultural activity, or of a business, or a product or a service, attempting to make it depreciated or ridiculous or through any other means, is prohibited.
	Article 184 of Industrial Property Law no. 17-97 a	False allegations in the course of trade of nature as to discredit the establishment, products or industrial or commercial activities of a competitor

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		are prohibited.
	Article 22 of Law No. 31-08	Any publicity comparing characteristics, prices or tariffs of goods, products or services utilizing either a citation or representation of a third party's trademark, service mark, denomination, company name, trade name or signboard, shall be deemed a comparative advertising.
Lebanon	Article 714 of the Penal Code	Intentional diversions of clients as well as deceptive advertisings are prohibited.
	Article 11 of the Consumer Protection Law	
Syria	Article 116 (e) of Trademark Law no.8-07	The acts which may degrade the distinctiveness force of the trademark of the others, illegally misuse its reputation or fame, or of the reputation or the goodwill of the establishment of third parties are prohibited.
UAE	Article 66 of the Commercial Transactions Law	A trader may not resort to fraud and cheating when marketing his goods, nor may he spread or publish false particulars tending to be prejudicial to the interests of another competitor trader; in default he shall be liable for damages.
Jordan	Article 2 of Trade Secrets and Unfair Competition Law no.15-00	Any competition contradictory to the honest practices in the commercial and industrial activities shall be deemed one of the unfair competition acts and particularly the following: 1. The activities that may by nature cause confusion with entity, products or commercial or industrial activities of one of competitors. 2. Untrue assumptions in practicing trade, Causing deprivation of trust on one of the competitors' entity, products or industrial or commercial

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	<p>activities.</p> <p>3. The data or assumptions used in commerce that may mislead the public in respect to the product's nature, methods of manufacturing, properties, amounts, and availability for use.</p> <p>4. Any practice that reduces the product reputation, causes confusion in respect to the product general shape or presentation, or misleads the public on declaring the product price or the method of counting thereof.</p>
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Source: Saba & Co Intellectual Property (May 12, 2011). Morocco: New Law on the Protection of Consumers. <http://www.sabaip.com/NewsArtDetails.aspx?ID=661>

The Law of comparative advertising is not clear and well developed in Lebanon:

"The need is great and urgent for legislation in this domain."

(Darouni, page 233, 2006)

A strong comparative advertising can be dangerous at the same time. Though, advertisers in the field must be very cautious when using advertising, especially when they are comparing specific products of certain leading producers especially in the Arab World. Advertisers must strictly examine the truthfulness of the comparison to avoid being sued by competitors for trademark infringement or for unfair competition.

On the other hand, companies that have been affected by unfair comparative advertisements have the right to file suit, if successful, receive compensation. An in-depth legal scrutiny of the relevant advertisement must be conducted to ensure that reference to a competitor's trademark neither implies an affiliation nor explicitly or implicitly endorses the advertiser's products.

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Furthermore, advertisers must ensure that all underlying claims as to their product and compared to those of their competitors are substantiated, verified and accurate and are not misleading representations or exaggerations.

In addition, it is well known that UAE (one of the MENA countries), Trademark law also recognizes the concept of famous trademarks which also add to the discussion of comparative advertising. Well-known trademarks are those that enjoy a high degree of consumer appreciation. Due to the famous nature of the mark/brand, the courts award a greater field of protection to such marks. The courts are willing to protect famous trademarks to forbid others from using the mark in a way that would reduce its exclusivity.

Due to uncertainties around the topic of comparative advertising, companies must be helpful to the characteristics of the campaign to avoid potential legal implications of interfering with the reputation of a competitor's name. It is therefore positive to note the importance of ensuring that a competitor's mark is precisely reproduced. The court is likely to award damages for illegal use of a competitor's trademark if it has, or else been altered (Al Tamimi & Company - Advocates and Legal Consultants, Sharaf Al Hijazin, 2014).

2.3. Economic Perspective

The use of comparative advertising is very advantageous and beneficial according to the antitrust authorities especially if not misleading, in order to transmit useful information to consumers and to increase competition in the market place.

Advertising play a big role on affecting consumers' behavior especially in the economics and marketing literature. In this paper we have concentrated on the

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clarifications of advertising proposed by economists and their application to comparative advertising.

Comparative advertising is very helpful in transmitting information to consumers. This is related to the important circumstance of how information can be transmitted by an “interested party” to another economic agent and raises the problem of trustworthiness. There is an important difference between content-free generic advertising and comparative advertising: the latter contains a “superiority claim” which possibly makes the reaction of the competing firms. Some advertisement can include a competitor; therefore this competitor can decide to challenge the superiority claim by engaging in a lawsuit despite the fact that he would be mentioned in the advertisement implicitly or explicitly (Bargozzi & Peitz, 2004).

To halt advertising firms from misleading consumers, request for easily verifiable comparative advertisements where we can easily find deviation from the truth. Advertisers must be severely punished. In this case we can state that comparative claims are truthful and comparative advertising is directly informative.

Under directly informative advertising, Barigozzi, and Peitz (2004) showed that comparative claims can become a differentiation strategy. They can be used by competing companies to credibly point out the superiority of their goods along certain dimensions such to loosen price competition. Therefore, adverse to what competitions authorities seem to have confidence in, it is possible that more information, as provided by comparative advertising, increases the market power of firms, instead of reducing it.

When a demand in the ad is difficult to prove, advertising companies decide to use true or wrong statements. In this case such the one presented in Barigozzi, Garella

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and Peitz (2009), in the cost of the advertising campaign, the response of the competitor can provide an effective channel for transmitting information to consumers indirectly. In fact, during the execution of a misleading advertising campaign, the company will be prosecuted and convicted.

This represents a cost of mimicry and slacks the incentive constraint for the advertising business. Thus, using (dissipative) comparative advertising can be obtained at a lower cost. The role of signaling comparative advertising is particularly important when the claim of the advertising function of the quality characteristics that consumers cannot check before buying the product.

Therefore, comparative quality claims can be indirectly informative for consumers if the false advertisements are punished, that is if the legal system works accurately.

A second interesting lesson can be drawn: the competition policy, competition law and their implementation are essential to a credible comparative advertising campaign to be well set up and realistic. This is important because if claims are credible, comparative advertising can provide useful information to consumers. In other words comparative advertisements can increase competition between companies and retailers only if claims are credible and claims are credible only if the legal system is efficient in the treatment of false accusations. If companies spreading misleading advertisements are not punished, all claims become drain, in other words, comparative claims which are defined non actionable “mere puffery” become the equivalent of the listing common advertisements and are not informative (Barigozzi, Garella and Peitz, 2009).

2.4. Examples of Comparative Advertising

Most of people have seen different ways of advertising uses by companies to meet their current and potential customers. Although there is information or entertaining campaigns, one technique tends to stand out being very persuasive to win potential customers and that is Comparative advertising.

This form of advertising is when the target firm intentionally mentions their main competitor to show why their product or company is more important and deliberately higher. This can differ from simply advertising that implies inferiority of competing brands or companies, to exactly mention the facts or qualities of a product. Comparative advertising tends to pretend or parody the competing brand in order to generate support for their product.

A company famous for implementing this strategy is Apple, with their Mac vs. PC campaign (Thanintabuteau, 2012).

However, recently this technique is now being kept to them. With the highly publicized legal battle between Apple's iPhone and Samsung's Galaxy SIII over patents, Samsung decided to start out a new campaign mocking Apple's latest phone – the iPhone 5. It aims specifics of the phone, such as headphones jack on the bottom, implies how the recent phones have not changed and portrays the Apple fanatics in a negatively.

Simultaneously, it has people show off a Galaxy S III, and has them demonstrate why it is greater, such as explaining features, or showing that much of the technology people are waiting in line for is readily available through Samsung (Thanintabuteau, 2012).

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Remarkably, it does all this without clearly stating the product or company name in order to protect them from any legal action. Samsung uses suggestions such as similar stores, and had people.

For whom who love Apple, this campaign has led them to reconsider their current product choices. Comparative advertising is a great technique to appeal potential consumers and change consumer perspective. It provides reasons and justifications for to the consumer to switch over to their product and creates a good impression and reputation that the other brand is inferior. By making these reasons so clear and obvious, it allows consumers to easily remember and evaluate their product in a positive way (Thanintabuteau, 2012).

In many European countries, comparative advertising is allowed even when it involves using somebody else's brand. However, companies should not take into too far: using comparative advertising damaging a competitor's brand remains prohibited by law.

An example of this is a ruling in the Netherlands in which the judge has banned the advertising campaign for Burger King that shows McDonald's trademark clown shopping at Burger King. The judge thought it was embarrassing. While consumers everywhere simply thought it was funny.

Figure 1

Burger King Comparative vs. Mc Donald's



2.5. Consumer Perspective

Research showed that higher perceptions of similarity, following exposure to comparative vs. non-comparative advertising, clarified these effects by using the concept of stimulus categorization.

“Everyone uses his memory when he/she is exposed to advertisements. Any individual's memory is organized into logical categories which represent knowledge and concepts as reciprocally linked. The inferences which consumers develop about an object, depend mainly on the schema that is activated from memory and on the organization of the information already stored”

(Walker & Anderson, 1991).

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Meanwhile direct comparative advertising is an effective tool which explicitly compares the marks on the same attributes; consumers might infer similarity and categorize the brands into the same cognitive category (Pechmann and Ratneshwar, 1991) argue that “such an effect could be due to the unconscious usage of certain heuristics for the stimulus categorization.”

Comparative advertising plays a role by making a point of difference between the company’s products and others. The idea is to make a consumer advertising campaign by highlighting the qualities of your products while comparing it with that of the competitors.

Comparative advertising helps to bring information regarding products giving chance to the consumers to make an informed choice.

However, these advertisements have made the consumer more skeptical about the claims made by a corporation about its product being superior as the truthful information has not always been provided. Consumer has an expectation of both fairness and balance and if not done carefully, this type leads to more uncertainty in the minds of the consumer (Industrial organization, 2009).

Yet, none of the research mentioned above considered the fact that few consumers process information quickly in order to simplify and expedite the process of the categorization. In fact, all consumers in the market for a product will not receive and process advertising messages in the same way (Richins, 1991).

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One of the most important practices is the comparative price advertising from the behavioral viewpoint because comparative pricing may lead to customer misperceptions.

The comparative advertising has influence on three parties: the advertising firm, the rival companies and the customers. As has been held in L'Oreal's case, harm is caused to premium perfume-makers as well as a potential customer who has that much of a potential and financial ability to purchase the product and to pay for the value the product maker excels but due to fact of comparative analysis if such comparative advertising caused people who could pay for the originals to purchase the copy product, instead.

The judgment conveys the impression that the task of a trade mark is to serve the consumer. The task of a trade mark is to emphasize the producer's goods from the mass of unknown products and to establish a communication channel to actual buyers and users of the product. It is a message channel for the gain of its owner, but with the results that the addressed user or buyer may obtain information regarding the product irrespective of whether that information is objective or subjective.

Consumer benefit is the by- product of market competition. According to (Ralph Brown) while planning the rules of trademark law focus should be on competition, as the areas of trademark protection get bigger, it necessarily does so at the expense of competition. With a plan to have a larger consumer base many corporations use the power of advertisement as business strategy to maintain brand equity.

Since the main purpose of advertising is to be a magnet for consumers to a particular product, care must be taken as to what information it provides. If done in a fair

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manner these advertisements helps the consumer to make an informed and efficient choice. The goal of comparison should be for consumer interests.

The aim of this research is to extend their results. In fact, this study considers a further possible effect of comparative appeal: the capacity to communicate a differentiation strategy.

Comparative table (Middle East, USA, EU):

The following table presents the general idea of law related to comparative advertising in different regions. For instance MIDDLE EAST does not accept any confusion to customers whereas UNITED STATES allows comparative advertising only under certain conditions. On the other hand, EUROPEAN UNION has accepted trade mark and comparative advertising.

In the United States comparative advertising has been a well-recognized and acceptable form of advertising. The Federal Trade Commission has supported the use of brand comparisons.

On the other hand, initially the European countries were hostile to the idea of comparative advertisement but after the EC legislation, comparative advertisement was accepted as a legitimate means of providing product information to the consumers.

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Table 2

The Degree of Acceptance, Avoidance and Allowance with Limits of the Concept of Comparative Advertising in Different European Countries

	Prohibited	Adopted	Allowed with limits
Belgium	5	2.5	2
Denmark	2.5	5	2
Portugal	3.5	1.5	5
UK	2.5	2.5	5
Spain	1.5	1.5	3
Greece	1	1	5

The numbers associated to each country explain the degree of acceptance, avoidance and allowance with limits to the concept of comparative advertising.

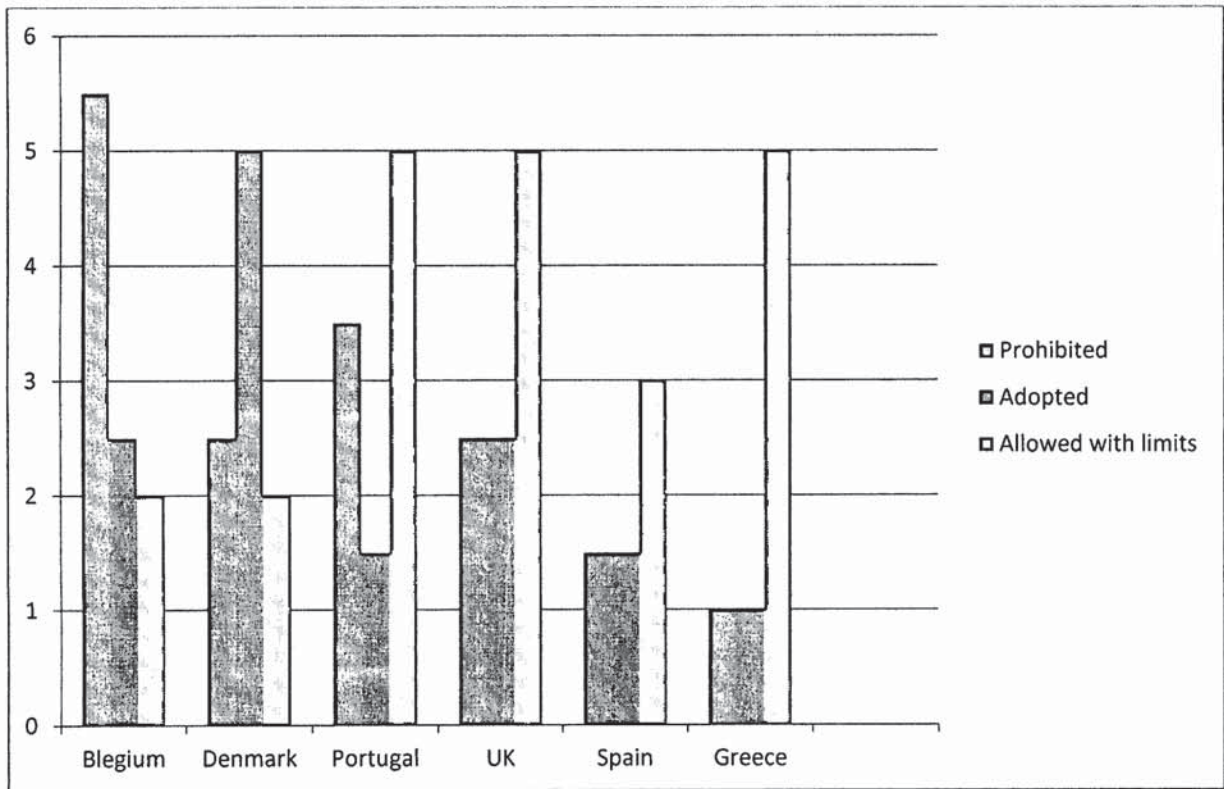
For instance UK, GREECE, and PORTUGAL have a score of (5) since they allow of comparative advertising but with limits and they have a half score (1) and (2.5) since they partly prohibit and adopt comparative advertising.

Source: (Delhi High court),(Bryan Cave, Paris, January 22, 2013), (Garrigues, December/January 2010)

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Figure 2

The degree of acceptance, avoidance and allowance with limits



Source: (Delhi High court),(Bryan Cave, Paris, January 22, 2013), (Garrigues, December/January 2010)

COMPARATIVE TABLE (MIDDLE EAST, EUROPEAN UNION, UNITED STATES)

Table 3

Detailed Comparison between ME, US and EU from Legal, Economic and Consumer Perspectives

	<u>MIDDLE EAST</u>	<u>UNITED STATES</u>	<u>EUROPEAN UNION</u>
<u>LEGAL PERSPECTIVE:</u>	<p>An advertisement in which a particular product, or service, specifically mentions a competitor by name for the express purpose of showing why the competitor is inferior to the product naming it. The advertisement must not take unfair advantage of the reputation of a trade mark of a competitor. Comparative advertising is rarely used in Arab countries. In Middle Eastern countries it is perceived as an act of unfair competition simply because any type of comparison between goods and services of different parties may carry with it some considerable risks.</p>	<p>Any advertising that compares alternative brands on price or other measurable attributes and or identifies the alternative brand by name, or other information.</p> <p><u>FTC</u> stated that comparative advertising ,where the comparisons are clearly identified, truthful, and non-deceptive, can be a source of useful and important information to consumers and can assist them in making rational purchasing decisions.</p> <p>In <u>Lanham Act</u>: the plaintiff's burden of proof varies depending on the type of relief sought.</p> <p><u>Advantages and</u></p>	<p>Any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.</p> <p>The law of comparative advertising has been standardized by the European Union.</p> <p>Comparative advertising is permissible only if the advertisement contains a comparison in the form of an evaluative or equivalence assertion.</p>

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		<p>disadvantages of FTC: well-versed in assessing false advertising issues and holds public workshops on complying with federal and state truth-in-advertising standards. Significant disadvantage is once the complaint is made, you have no control over how the investigation will proceed.</p>	
<p>of acceptance ce, allowance th limits</p>	<p>Not accepted at all</p>	<p>It is permitted</p>	<p>Accepted under certain conditions</p>
<p>MIC ive</p>	<p>The use of comparative advertising is very beneficial according to the antitrust authorities especially if not misleading, in order to broadcast useful information to consumers and to augment competition in the market place.</p> <p>Advertising plays a big role on touching consumers' sustainable behavior on a permanent manner especially in the economics and promotion literature.</p>	<p>Comparative advertising may increase the willingness-to-pay for the sponsoring brand and it may reduce the willingness-to-pay for the compared brand.</p> <p>Comparative advertising may also be seen as a complement if consumers derive benefits from consuming the advertising together with the product of the sponsoring brand.</p> <p>The cost of the advertising campaign, as in the case of generic content-free ads, can</p>	<p>Comparative advertising may also be seen as a complement if consumers derive benefits from consuming the advertising together with the product of the sponsoring brand.</p> <p>When the comparative advertising is consumed together with the negatively compared good; it may decrease the</p>

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		indirectly transmit some information to consumers.	utility that consumers of the competitor's product get from such a product. The standard assumption is that consumers can infer the cost of the ad
<u>CONSUMER</u> <u>spective</u>	<p>These advertisements have made the consumer more skeptical about the claims made by a company about its product being superior as the accurate information has not always been provided.</p> <p>Consumer has an expectation of both fairness and balance and if not done carefully, these advertisement leads to more confusion and anxiety in the minds of the consumer.</p>	<p>Everyone uses his memory when he/she is exposed to advertisements.</p> <p>Any individual's remembrance is controlled into rational categories which signify awareness and concepts as jointly linked.</p> <p>The deduction which clients develop about a thing, depends on the plan that is activated from memory and on information already stored"</p>	<p>If used carefully, comparative advertisements help to bring more information regarding products giving opportunity to the consumers to make an informed choice.</p> <p>It can stimulate competition between suppliers which works to the consumer's advantage. It not only helps the consumers to make an efficient choice it also helps to maintain market transparency.</p>

Sources as arranged: (Delhi High court),(Bryan Cave, Paris, January 22, 2013), (Garrigues, December/January 2010)- (Saba & Co Intellectual Property, 2011) – (Richins, 1991) – (Bargozzi & Peitz, 2004) – (Kirmani, 1996) – (Thress, 2011) – (FTC, 1979)

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In addition, the above table presents a comparison based on several features and criteria's such as definitions, degree of acceptance and avoidance.

As a summary for this table concerning comparative advertising between ME, US, and EU we can say that according to Middle East the position in the ME region is that comparative advertising is lawful provided that such advertising does not amount to unfair competition; contravene provisions of relevant legislation related to the protection of consumers or the prevention of fraud. In all instances of advertising related to any of products, the approval of the Ministry will be required.

While according to the United States, we conclude that Comparative advertising in the United States, while recognized by the FTC and NAD as being valuable to consumers if truthful and non-deceptive, also raises unique proof and burden-shifting issues that benefit .Plaintiffs challenging such claims under the Lanham Act. However, where a competitor makes a comparative advertising claim that your client insists cannot be substantiated, Lanham Act litigation is only one of several options for proceeding with a challenge. While choosing the best plan of action is rarely an easy task, knowing what options are available and how they tend to play out in practice will enable you to choose and adjust your plan wisely.

Europe comparative advertising is a bona fide, legally permissible marketing tool. The European Union's policy in this regard was and still is to create a simplified and standardized legal framework that ensures that in every Member State the same rules apply. Perhaps very soon companies will be touting "compare, compare, compare" in their advertising.

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In addition Middle Eastern countries define comparative advertising as an advertisement in which a particular product, or service, specifically mentions a competitor by name for the express purpose of showing why the competitor is inferior to the product naming it.

What is more (European Union, Directive no 97/55) defines comparative advertising as:

“Advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor”

(Barigozzi & Peitz, 2004)

By linking these three definitions to an ethical perspective which is the most important, one can find that comparative advertising is defined as:

“A practice in which marketing communication, typically claiming that the promoted item is superior to one or several important purchase considerations”

(Darouni, page 232, 2006)

All these definitions are related to ethics, for instance in the United States definition we can relate (express alternative brands) to (promoted item is superior).

In the Middle East definition we can relate (showing why the competitor is inferior to the product naming it) to (promoted item is superior).

Whereas in the European Union definition we can link (a competitor or goods or services offered by a competitor) to (promoted item is superior to one or several important purchase considerations).

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One more thing is that according to Darouni, (2006) about the control of advertising:

"False, misleading statements and the comparison which unfairly disparage a competitive product or service must be banned"

(Darouni, page 231, 2006)

What can be concluded from this analysis is that any perspective is related to ethics. Any advertising must be ethical.

The way consumers understand advertising is important for the court, as "implying falsity" claims demonstrate. But, at the same time, consumers' perception is influenced by the legal practice that is consumers learn to interpret comparative claim by observing the outcome of existing litigations. In this sense, legal practice intensely affects the way comparative advertising is used by firms and understood by consumers.

Therefore, a more restrictive legal attitude towards comparative claim, as in Europe can perhaps better improve competition than in the US because it contributes more to the credibility of comparative advertising.

Nevertheless, if consumers are sophisticated enough so that they distinguish between comparative advertising containing puffery, which cannot be authorized, and other comparative advertising claims, which can be authorized, also the legal attitude in the US does not interfere with the flow of information from firms to consumers.

The different consumers' attitude components are interrelated and contribute to customer satisfaction then loyalty when the initiator can be persuasion through comparative advertising.

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What extremely contribute to the originality of this study are the results of the survey and interviews conducted and used as primary data. Thus, after consolidating all the findings of the literature review, the hypotheses that are going to be listed in chapter three will show the Lebanese consumer's attitude towards comparative advertising.

Moreover the author will put together all the interviews findings conducted with lawyers and professional marketers for both Legal and economic perspectives. The results show the real practices of legal authorities towards comparative advertising and the new trends of advertisements in the Lebanese market.

III- METHODOLOGY

3.1. Introduction

Methodology does not explain only methods, but it also states several processes that must be followed. In order to assess the status of Comparative Advertising in Lebanon, this thesis has chosen to put a higher emphasis on the qualitative research. A qualitative research allows the subjects being studied to give more affluent answers to questions asked by the researcher, and gives more important insights which might have been missed by another method data collection (Maxwell, J. A., 2004)., specially that a lot of interviews were conducted with Law specialists and Lebanese advertising practitioners.

On the other hand, to be able to quantitatively measure the consumer attitudes towards comparative advertising in Lebanon, the author conducted a survey on a large sample of Lebanese consumers of different profiles.

After going through the Literature review tackling the three perspectives of the study (Legal, Economic or Professional and Consumer's, the author has consolidated the findings of major studies and articles and analyzed the situation of the comparative advertising in Lebanon accordingly.

The main contribution of this thesis that analyzes comparative advertising is answering the research questions and supporting the findings by realistic figures describing the real status quo of Lebanese comparative advertising.

3.2. Research Questions:

- What are the effects of comparative advertising on the Lebanese Consumers?
- What are the Lebanese legal authorities' opinions about comparative advertising?
- What are the determinants of the best practices of this technique in Lebanon?
- Is it possible to create a formula balancing between law, ethics and commercial practices in comparative advertising?

3.3. Hypotheses

H1: Comparative advertising may affect or change the consumer's purchasing behavior.

H2: Having clear legal advertising law will make the practice more accepted to consumers.

3.4. Data Collection

Secondary Data:

Secondary data were collected from different previous research and studies done about the subject such as: Books, electronic libraries (JStore, Proquest), papers, articles, websites, governmental documents, studies, corporate and academic publications among other trusted and reliable sources.

Bearing in mind the scarcity of the resources, the author collected findings of empirical studies in addition to recommendations and results of qualitative research and

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consolidated them in the literature review chapter that was divided also to three perspectives aligning with the general flow of the thesis.

Primary data:

Primary Data were mainly gathered from several interviews with Legal specialists, advertising practitioners and a survey conducted on a considerable sample of Lebanese consumers to cover the three perspectives of the study:

- Interviews with Legal specialists to gather information about existing law of comparative advertising in Lebanon and about cases they worked on (See Questions of the Interviews in Appendix C).

- Interviews with advertising and marketing practitioners who have faced or created direct competition and comparative advertising campaigns in Lebanon (See Questions of the Interviews in Appendix C).

- Statistical Survey conducted with 140 consumers (chosen on the basis of Simple Random Sampling) assessing their opinion concerning comparative advertising in Lebanon.

Interviewees will refer to cases, provide valuable insights on regulatory updates and will offer tools and best practices to help finding better ways to use fair comparative advertising in Lebanon. Answered are analyzed via SPSS software.

3.5. Qualitative Analysis

The qualitative analysis of this study is divided into three sections. Starting with the legal perspective of the comparative advertising: internationally, regionally and locally. Then proceeding with the market analysis (local, regional and international), it is to assess the new trends of the industry and pinpoint the competitive profile of the Lebanese products and services.

Moreover in the second section, the interviews conducted with major players in the field of media provided the researcher with arguments as primary data concerning the status of the comparative advertisement, its practices and effects on Lebanese market, consumer's behavior, sales and profits of companies.

Additionally, interviews with legal specialists collecting information about law and legal sanctions applied on the Lebanese comparative advertising.

The last section is a case study of the campaign "Helo" of Doueyhi vs. Hallab.

Lastly, conclusions are extracted from comparisons between the published reference-work of the literature review and true facts from the interviews and survey conducted by the researcher then recommendations are drawn.

3.6. Quantitative Analysis

Once the arguments have been qualitatively verified, a survey is conducted on comparative advertising in Lebanon, distributed to a simple random sample (Frerichs, R.R., 2008) of 140 Lebanese consumers of all ages, genders and social classes. No segmentation was needed in this case since all Lebanese above eighteen are considered

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consumers that can easily undertake this kind of survey. The author distributed 140, 50% of the forms are filled by University students at Lebanese Universities:

- 25% Balamand Kalmoun,
- 13% NDU Barsa,
- 12% USEK

50% of copies are filled by housewives at Lebanese Malls:

- 25% Le Mall Dbayeh
- 17% ABC Dbayeh
- 8% CITYMALL Dora

Ages of the Respondents were as follows:

90% are between 18 and 30, 7% between 31 and 40 and 3% between 41 and 50.

Genders are divided into 57% females and 43% males.

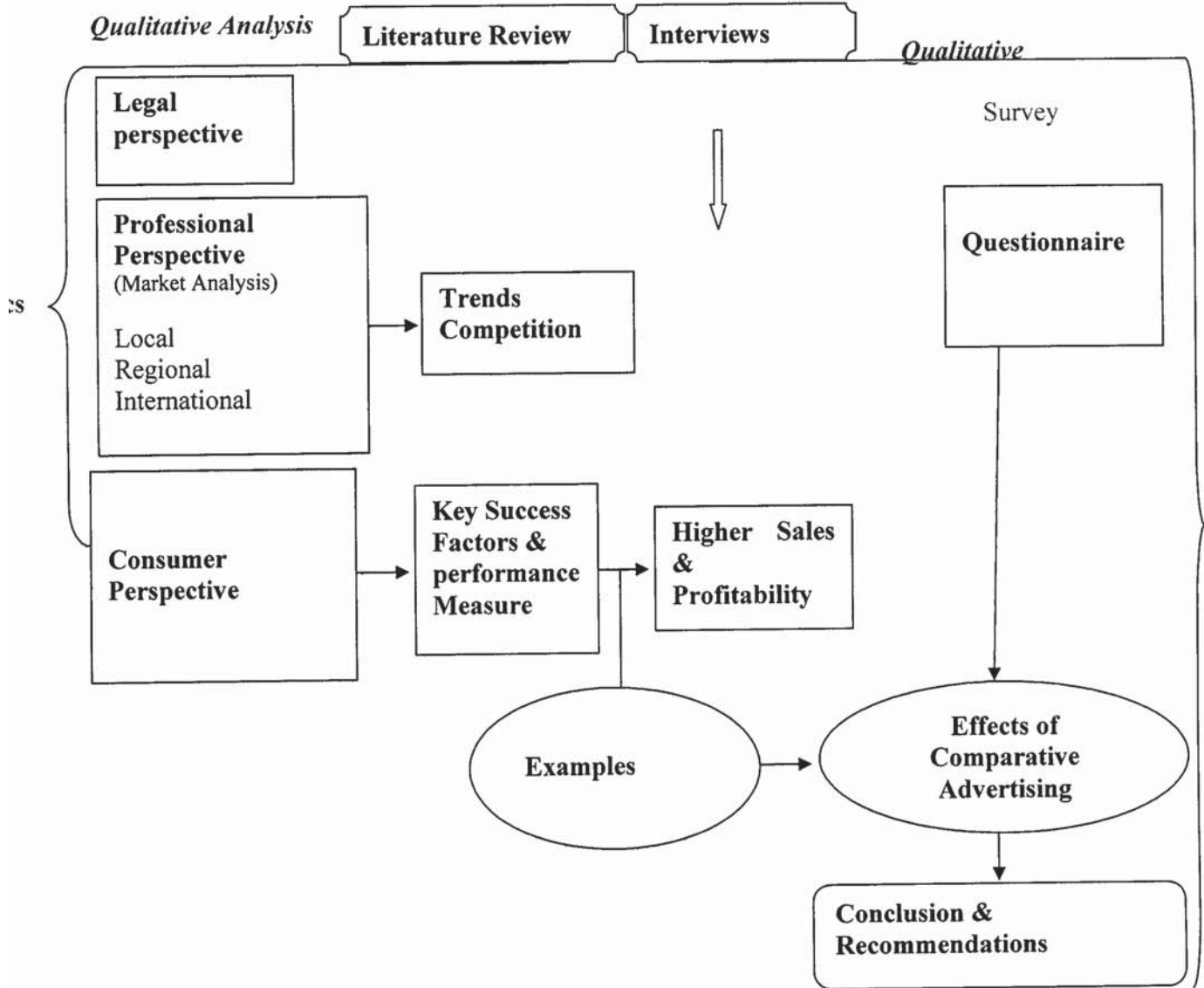
3.7. The Applied Communication Model for the Thesis Research

The research, assessment and deductions of this thesis are based on Qualitative and Quantitative analyses. The information collected are processed and analyzed to come up with enough evidence for accurate interpretation of the actual status and prospects of the comparative advertising in Lebanon. This will lead to a set of deductions in order to come up with recommendations about comparative advertising in Lebanon.

This is all summarized in the following Model:

Figure 3

The Applied Communication Model for the Thesis Research



This thesis was meant to analyze the current status of comparative advertising in Lebanon from its three interrelated perspectives: Legal, Economic and Consumer.

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As stated previously in this chapter, the main contribution of this study over others made on the same topic is that a statistical survey will show the opinions of the Lebanese consumer about this type of advertising and how much it influences their buying behavior.

The results of the survey will be introduced and analyzed in chapter four with valuable clarifications about the legal and economic positions derived from the interviews.

IV- RESULTS AND DISCUSSION

4.1. The Interview Results

4.1.1. Legal Perspective

Interview has been conducted with a judge and two lawyers (President **Antoine Nachef, Chawki Sassine, and Adel Boutros**).

The following are the answers of President “Antoine Nachef”:

- **Are you familiar with comparative advertising cases? What are the major cases? Please explain.**

In brief, every product has the right to present itself in a unique way with the most important condition which is: it must be real. One example is about (Ariel/Persil).In Lebanon, there are no restrictions in mentioning the name of the other product but till now no company did it and there is no legal reason for that.

- **Many governments around the world use regulations to control false and deceptive advertising, what about Lebanon?**

The answer was that in Lebanon there is an Audiovisual Law. In addition there is a proposed law in the parliament to organize billboards. In addition, any advertisement related to tobacco or religion is forbidden.

- **Do you think comparative advertising is unfair in Lebanon in your opinion and why?**

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Advertisement that contains a sense of humor such as “BUZZ” and “Machawe w Chabeb” are encouraged because they contain a new idea but when there is a misrepresentation of the idea, the advertisement will cause problems for both parties.

- **What kind of comparative advertising is permitted in Lebanon and why?**

If the product applies international and health standards, there will be no problem to advertise it, unless if there is false claims. However, if it wants to compare, it is not allowed to show its pluses at the expense of another product's minuses.

- **Who is responsible of deceptive comparative advertising? Is it the government or Lebanese sectarians (business bosses)?**

The responsible of “deceptive comparative advertising” faces the censorship committee in the concerned courts. This committee decides whether the advertisement is wrong and unlawful. The authority which monitors the advertisement industry is the Ministry of Economy to protect the consumer.

- **Should comparative advertising should be censored by government or through self-control.**

The answer was: The censorship is monitored by the ministry which observes any unethical contravention.

Lawyer Sassine answered the same questions asked as follows:

For question number one, he said that he hasn't appealed any case of this type.

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Whereas for question number two, in Lebanon, he said we have a consumer protection law which defines deceptive advertising and imposes on it punishments (one of them is the withdrawal of the advertisement). The most valued in this law is the protection of the customer and encouraging him to buy the product. In addition, he gave some examples on deceptive advertising which includes a misstatement about the product specifications

Furthermore, the advertising is also deceptive if the product's specifications are deceptive. The deceptive advertising involves the weight, the size, on top of all, the product's expiry date.

Lebanon has a free market economy, lawyer Sassine said. Thus, comparative advertising depends on the business market. Any competition is permissible as long as the consumer is not exposed neither to harm and lies in advertising, nor to slander and offense which might affect other products.

The answer for the kind of comparative advertising which is permitted in Lebanon was that any deceptive advertising is not allowed in Lebanon.

Usually, most of the comparative advertisements do not mention the other product to avoid harming.

The answer for who is accountable of comparative advertising is the Lebanese government and specifically the Ministry of Commerce and Trade, and the Consumer Protection Directorate. The law sets two things; first the mediation and second a committee for solving amicably, controversies that might arise between competitors.

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However the case of breaching laws, he said, advertisers should solve the issue by referring back to the administration through the Ministry and mediation, or to the concerned court.

The third lawyer is Dr. Adel Boutros answered as follows:

- For question number one, he said that he did not work in comparative advertising before but he has worked on a similar case in which the international company (NESLITE) registered in Lebanon were involved and another company for food in the United Arab Emirates. The problem is the use of the word Crunch, which is attributed to Nestle Company, by another company.

For question number two, Dr. Boutros said that Lebanon has regulations for longtime that protect consumers from deceptive advertising. In case any of those problems occur, the concerned person has the right to file a legal action in court. This is, of course, excluding the civil rights that the harmed parties or concerned person can ask for. Thus, the deceptive advertising becomes a penal crime defined with its penalty by the law.

About the fairness of comparative advertising in Lebanon, Dr. Boutros said that in Lebanon the comparative advertising is not treated as it should be, because there is no clear legitimacy to accept it.

The deceptive advertising is immediately forbidden and withdrawn from the market, especially if it harms, affects other products, or causes any damage for the consumer, specifically in the field of medicine.

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Lawyer Boutros said that as far as comparative advertising is not prohibited by law and not harming the other party, it is permitted in Lebanon.

He said it shows the cons of others to highlight its pros. The responsible of the deceptive advertising is the one that causes slander to other product.

Lawyer Boutros added that every company or product's owner has to self monitor his product since he is aware of what is allowed and what is not by law.

After getting the answers of the three lawyers we can conclude the following:

- Concerning the comparative advertising cases, President Nachef presented the case of (Fairy/Persil) and that no one company in Lebanon till today has used the name of the other product in the advertisement. However, Mr. Sassine did not appeal any case about comparative advertisement. Mr. Boutros had seen a case that looks like the comparative advertising (NESTLE and the word crunch that has been used by another company in UAE).

- Concerning the presence of regulation in Lebanon that control the comparative advertising, the three lawyers had a common answer which is we have our regulations since longtime, we also have new laws published in 2005.

Yes, there is in Lebanon a consumer protection law promulgated in 2005. There is a law in Lebanon called the Audiovisual Law. It was promulgated in 1994 and discusses, in general, advertisements from Article 36 to 42.

- Concerning whether comparative advertising is unfair in Lebanon or not, also the three lawyers had the same answer: We encourage innovation and good ideas and

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those that have a sense of humor but when there is a misrepresentation of the idea, the advertisement must be omitted. They also said that the deceptive advertising is immediately forbidden and withdrawn from the market, especially if it harmed, affected other products, or caused any damage for the consumer, more specifically in the field of medicine.

- Concerning whether comparative advertising is permitted in Lebanon or not, the three lawyers also had the same answer which is: As far as comparative advertising is not prohibited by law and not harming the other party, it is permitted in Lebanon.

Concerning who is accountable for the comparative advertising, President Nachef said that the responsible persons of “deceptive comparative advertising” face the censorship committee in the concerned courts.

Whereas Mr. Sassine said that the Lebanese government more specifically the Chamber of Commerce is responsible of controlling comparative advertising.

Mr. Boutros stated that the responsible of the deceptive advertising is the one that causes slander or libel to the other product.

Concerning the censorship of comparative advertising, the three lawyers had a common answer and opinion. They stated that the advertisers and the owners of the product to sell, with the responsible planners should control the advertisement by themselves, to avoid any breach of the law.

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The following table compares the lawyers answers and consolidates their opinions:

Table 4

Comparative Table for the Answers of the Interviewed Lawyers about Comparative Advertising in Lebanon.

	President Nachef	Mr. Sassine	Dr. Boutros
Comparative advertising	Persil/Ariel	Did not appeal any case	Case similar to comparative advertising (NESTLE and the world crunch)
Age of regulations to false and deceptive advertising.	The law is published in 1994. It is called audiovisual law.	The law is published in 2005	The law is published in 2005
Comparative advertising in Lebanon?	If it harms, damages other products the advertisement will be forbidden.	It is fair if the consumer is not affected by any harm	Comparative advertising is not acceptable as there is no actual legitimacy to the effect.
Kind of comparative advertising is permitted	There will be no problem to advertise it as long as it is showing its positivity.	The comparative advertising is permitted if only it is abiding by the conditions	Comparative advertising is not prohibited by law and not harming the other side it is permitted in Lebanon.
Who is responsible of false comparative advertising?	censorship committee	Lebanese government	The one that causes slander or libel to the other product
Comparative advertising can be censored by government or through control?	The ministry which observes any unethical contravention.	The advertisers and the owners of the product to sell, with the responsible planners, control the advertisement by themselves	Every company or product owner has to self monitor his product

(See Appendix D)

4.1.2. Economic and Professional Perspective

Interviews of 6 questions (See Appendix E) have been conducted with Marketers, General Managers, and instructors concerning comparative advertising in Lebanon.

The first interview was with Advertising Instructor at NDU and Senior Art Director at Mac Group Communications, Lebanon (Ms. Sandra Younes).

The questions were as follows:

- **When do you usually use comparative advertising?**

Comparative advertising is used when advertising practitioners and clients approve and accept the fact to use a term called 'knocking copy' and visual, in order to trigger an instant whereby the name of both brands will be repeated, thus creating brand recognition.

- **Do you find comparative advertising useful and beneficial in the market place? Why?**

Ms. Younes answered the following: Comparative advertising has been very useful throughout the years, due to the fact that it compares a specific unique brand attribute to the target, which differentiates it from the competitions brand in the same creative visual representation.(For example :Pepsi and coca cola) (McDonald's and Burger King)

- **What are the advantages and disadvantages of using comparative advertising in Lebanon?**

Advantages: Believability, which refers to the extent a consumer can rely on the information provided in comparative advertisements, the level of consumer involvement,

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which will allow the consumer to interact with the brands and the convenience in evaluation.

Disadvantages: In Lebanon, it might damage the honor and credibility of advertising due to giving a bad reputation for the other brand. This will make people recall it for a long time.

How can comparative advertising affect the Lebanese consumer?

Lebanon's consumer is very dynamic to talk about trends especially using the social media. Thus, the role of comparative advertising comes. Also she said that Comparative advertising will trigger a word of mouth and will generate a competitive standing for other advertising agencies to join in.

What do you consider one of the major successful comparative advertisements in Lebanon? Please explain and why?

Advertising agencies have used comparative advertising in their own preserved understanding, yet, they still keep the same meaning. A very good example is the (Douaihy and Abdel Rahman Al Hallab) campaign.

The other interview was with Mr. Melhem Rechdan, Senior Marketing and Communication Specialist at OMT.

First, when he has been asked about the use of comparative advertising he replied by that marketers use comparative advertising whenever they have two competitive brands which have low levels of differentiation such as Persil vs. Ariel, or Pepsi vs. Coca Cola. Also, comparative advertising is also whenever there is a competitive advantage

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that a brand wants to show over another brand to explain to the consumer. Whenever there is a high level of competition between two brands and one of the brands wants to use advertising to retaliate on a claim stated by the other competitor.

When he was asked if comparative advertising is useful and beneficial, he answered “No”, I do not support comparative advertising unless it is backed up with research facts. In Lebanon, there is a level of unethical usage of comparative advertising because brands which use it do not give clear explanations to their claims and may use unrepresentative samples in research. It is only beneficial when it answers questions of the consumers in a research-focused way.

Whereas for the advantages of using comparative advertising in Lebanon he said that the advantages are that consumers will be able to position better the brands in their minds and create a differentiation between competitive brands.

Its disadvantages are that it is mostly misleading to facts and sometimes brands use research samples which do not represent the segment of people to be studied.

The answer of Mr. Rechdan about the effects of comparative advertising on Lebanese consumer was that comparative advertising can leave an impact on the choice of brands at the point of purchase. It may give preference for a brand over its competitors.

When he was asked about the major successful comparative advertisements in Lebanon he replied by “I truly did not see much successful comparative advertisements in Lebanon. There was only one TV commercial for Bonux where they explained that consumers do not have to follow promotions as they should focus on the product advantages and not the gifts they receive from buying competitive brands.

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Third interview with Ms. Rima Saad- Advertising Instructor at NDU Louaize.

According to the use of comparative advertising, she said that comparative advertising is used when there are 2 competitors of similar products and one of them is trying to emphasize that its brand is better.

According to usefulness and the benefits of comparative advertising in the market place, she replied: Comparative advertising is useful and beneficial because it creates competition among the brands and ensure better improvement of product in longer terms since consumers are forced sometimes to analyze the differences between the two.

Concerning the advantages and disadvantages of using comparative advertising, she stated the following:

The advantages of comparative advertising are:

- Competition among companies, brands etc.
- Creating buzz around the brands so clients have the ability to criticize or judge.
- Feedback from consumers, sales people, retailers etc. regarding both brands and products.

The disadvantages of comparative advertising are:

- Unethical approach since it is like direct criticism of the brands –highlight the negative features of brands, services or companies
- Developing misleading attitudes towards competition.

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Whereas for how comparative advertising affects the Lebanese consumer, she said that she believes that comparative advertising can turn the Lebanese consumer into a better consumer in selecting his products or services.

When she was asked about the major successful comparative advertisement in Lebanon, she said that we do not have a lot of successful comparative advertising and the ones we have are not really creative or innovative. The ones we have are basically Proctor & Gamble brands and I do not believe that they are successful.

After getting the answers of the instructors, Marketers, and General Managers, we can conclude the following:

- Concerning, when to use comparative advertising, the three stated that the use of comparative advertising is when one have two competitive brands which have low levels of differentiation such as Persil vs. Ariel, or Pepsi vs. Coca Cola, which means when one have two competitors of similar products and one of them is trying to emphasize that his brand is better.

- Concerning, the usefulness of comparative advertising in the marketplace, Ms. Younes and Ms. Saad stated that comparative advertising has been very useful throughout the years, due to the fact that it compares a specific unique brand attribute to the target, however Mr. Rechdan do not support comparative advertising unless it is backed up with research facts.

- Concerning the advantages and disadvantages of using comparative advertising in Lebanon, consumers will be able to position better the brands in their

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minds and create a differentiation between competitive brands. And as a disadvantage, it is mostly misleading.

- As for the effect of comparative advertising on consumer behavior, a common answer also was stated which is comparative advertising can leave an impact on the choice of brands at the point of purchase.

- The major successful comparative advertisements in Lebanon, Ms. Younes gave the example of Douaihy and Abdel Rahman Al Hallab whereas Mr. Rechdan and Ms. Saad said that they did not see any successful comparative advertisement in Lebanon. And also they did not see them creative.

The following is a comparative table comparing and consolidating the practitioners' opinions:

Table 5

Comparative Table of the Practitioners Answers Concerning Comparative Advertising in Lebanon

	Ms. Sandra Younes	Mr. Melhem Rechdan	Ms. Rima Saad
1. When we use comparative advertising?	When advertising practitioners and clients approve and accept the fact to use a term called 'knocking copy'.	Comparative advertising is used whenever there are two competitive brands which have low levels of differentiation such as Persil vs. Ariel, or Pepsi vs. Coca Cola.	when there are two competitors of similar products and one of them is trying to emphasize that its brand is better
2. Usefulness of comparative advertising in the market place	Comparative advertising has been very useful throughout the years, due to the fact that it compares a specific unique brand attribute to the target	No support for comparative advertising unless it is backed up with research facts	Comparative advertising is useful and beneficial because it creates competition among the brands and ensure better improvement of

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			product
. Advantages and disadvantages of using comparative advertising in Lebanon	advantages would be believability, Disadvantages: jeopardizing the credibility and trustworthiness of advertising	The advantages are that consumers will be able to position better the brands in their minds and create a differentiation between competitive brands. Its disadvantages are that it is mostly misleading to facts and sometimes brands use research samples which do not represent the segment of people to be studied.	Advantages of comparative advertising: Competition among companies, disadvantages of comparative advertising are: Unethical approaches since it is like direct criticism of other brands.
.Effect of comparative advertising on consumer behavior	Comparative advertising will trigger a word of mouth and will generate a competitive standing for other advertising agencies to join in and be part of this challenge.	Comparative advertising can leave an impact on the choice of brands at the point of purchase. It may give preference for a brand over its competitors.	Comparative advertising will make the Lebanese consumer more aware in selecting his products or services
. The major successful comparative advertisements in Lebanon	Advertising agencies have used comparative advertising in their own preserved understanding, yet, they still kept the same meaning. A very good example is the Douaihy and Abdel Rahman Al Hallab campaign.	There is no successful comparative advertisements in Lebanon	I believe in Lebanon we do not have a lot of successful comparative advertising and the ones we have are not really creative or innovative.

(See Appendix C)

4.2. Descriptive Statistics, consumer perspective

The sample of 140 consumers (Randomly chosen from Lebanese Universities and Malls) surveyed answered 21 questions about the comparative advertising in Lebanon.

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The questions are divided onto two main sections: Agree-Disagree (Likert Scale), and Ranking section. In general, choosing an answer to the designated question on a 1-5 Likert Scale shows sometimes a common ground between these surveyed consumers and other times differences that need to be examined in order to discover individual fundamental causes. For this purpose, mean and standard deviations are calculated for each question. The survey produced some interesting results in terms of means and standard deviation, as listed in the **table** below:

Table 6

Descriptive statistics

	N	Min	Max	Mean	Std. Dev.
q1	132	1	5	2	1.69129096
q2	132	1	3		
q3	132	1	4		
q4	132	1	5	1.704545	1.17158933
q5	132	1	5	1.590909	1.09486597
q6	132	1	5	1.5	1.04547753
q7	132	1	5	1.931818	1.3359954
q8	132	1	4	1.75	1.14881132
q9	132	1	5	1.886364	1.39559106
q10	132	1	4	2.045455	1.51734162
q11	132	1	5	2.681818	1.82709233
q12	132	1	5	1.795455	1.16434885
q13	132	1	5		
q14	132	1	5	1.522727	0.81897425
q15	132	1	5		

(See Appendix A)

Questions with high standard deviations illustrate increased differences of opinions as is the case of question 13 with a 2.206 standard deviation. This question targets the influence of the purchasing behavior. Though this question has the highest

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mean (3.93) and standard deviation, still the result of it is “agree” and not “strongly agree”. Question 11 regarding the use of comparative advertising has the “Undecided” result with a mean of 2.68 and a relatively high standard deviation of 1.82. Question 1 got “Strongly Agree” reflecting the importance of the action.

To what extent do you agree or disagree with each of the following statements

(Please circle one answer in each line across):

1 = strongly disagree, 2 = disagree, 3 = undecided, 4 = agree, 5 = strongly agree

1. Comparative advertising has a direct impact on product/service sales: 60% agree

1	2	3	4	5
---	---	---	---	---

2. Governmental censorship is essential: 90% disagree

1	2	3	4	5
---	---	---	---	---

3. Having a clear law concerning comparative advertising is a necessity: 75%
strongly agree

1	2	3	4	5
---	---	---	---	---

4. Sectarian society is a major problem facing comparative advertising: 73% agree

1	2	3	4	5
---	---	---	---	---

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5. Lebanese comparative ads are creative and appealing: 65% agree

1	2	3	4	5
---	---	---	---	---

6. Comparative ads can affect or change the consumer's purchasing behavior: 54% agree

1	2	3	4	5
---	---	---	---	---

7. Comparative advertising should be subject to self-control: 95% strongly agree

1	2	3	4	5
---	---	---	---	---

8. Comparative Advertising in Lebanon is deceptive: 55% undecided

1	2	3	4	5
---	---	---	---	---

9. Direct comparative advertising is more likely to incite "The Word of Mouth": 90% strongly agree

1	2	3	4	5
---	---	---	---	---

10. Comparative ads are more abundant now: 60% disagree

1	2	3	4	5
---	---	---	---	---

11. It is possible to find a formula balancing between law, ethics and commercial orientations in one comparative Ad: 70% agree

1	2	3	4	5
---	---	---	---	---

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12. Censorship affects negatively the creativity of a Comparative Advertisement in

Lebanon: 60% agree

1	2	3	4	5
---	---	---	---	---

13. Comparative ads should be more often used: 55% undecided

1	2	3	4	5
---	---	---	---	---

14. Lebanese comparative ads are the best in the region (MENA): 90% strongly

agree

1	2	3	4	5
---	---	---	---	---

15. A comparative ad have changed your personal preference and purchasing

behavior to another product: 65% disagree

1	2	3	4	5
---	---	---	---	---

4.3. Ranking results

16. The following are the key success factors for commercial success of a Lebanese

Comparative Advertisement (please use a number from 1 to 5 from most

important to less important factor).

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1	Concept
2	Text/Humor
3	Product/Service
4	Budget
5	Casting

17. The main indicators of success of a Comparative Advertisement in Lebanon are:

(Please use a number from 1 to 5 from most important to less important)

1	Awareness
2	Big number of Likes and Shares on Social Media
3	Sales Number
4	Higher demand on Comparative Advertising
5	Awards

18. In your Opinion, what is the best Comparative Advertisement you have ever seen? Give examples.

Douaihi sweets and Abdel Rahman Al Hallab

19. Age Group:

Between 18 – 30 Years 31 – 40Years 41 – 50Years More than 50 Years

(See Appendix A)

Most of the questionnaire respondents (90%) were between the age of 18 and 30.

4.3.1. Discussion

What is remarkable in the results of the survey is that the Agree-Disagree questions got most answers (75%) between “strongly agree” and “undecided”, 25% “Strongly Agree”, 40% “Agree” and 15% “Undecided”, while 20% “Disagree” . Having a clear Law concerning Comparative advertising is a necessity, Comparative advertising should be subject to self-control and Lebanese comparative ads are the best in the region (MENA) got an agreement on “strongly agree”.

The “Agree” answers went to:

- Comparative advertising has a direct impact on product/service sales
- Sectarian society is a major problem facing comparative advertising
- Lebanese comparative advertisements are creative and appealing
- Comparative advertisements can affect or change the consumer’s purchasing behavior
- It is possible to find a formula balancing between law, ethics and commercial orientations in one comparative advertisement
- Censorship affects negatively the creativity of comparative advertising in Lebanon.

As for the “Disagree” answers, they went to:

- A comparative ad has changed your personal preference and purchasing behavior to another product
- Comparative Ads are more abundant now
- Governmental censorship is essential

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The above shows the rejection of governmental censorship, the demand for comparative ads and the weakness of comparative advertising effect on Lebanese consumer's behavior.

On the other hand, the comparative advertising determinants ranking from 1 to 5 gives the priority equally for the "concept" then "text/humor", while rank 3 goes to "product/service" showing the importance of creativity and innovation.

Concerning the main indicator of success of comparative advertising in Lebanon, "awareness" and communication of the brand in all means comes first which shows the high demand of this genre of advertising in the Lebanese society. While last rank goes for the "Awards".

Regarding the most recent successful comparative ad in Lebanon, Douaihi sweets and Abdel Rahman Al Hallab got the highest percentage of best Lebanese comparative ad (Ms. Sandra Younes Interview). (See Appendix C)

The results of the survey align with the opinions of the interviewees and the results of the qualitative analysis. The overall analysis results make the deduction of urgent action plans on the short term as well as important ones on the long term.

V- CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

There was a consensus throughout the thesis that comparative advertising is about telling the customers what are the characteristics of the sponsor's goods. This practice can be socially good if the advertising is true and not misleading, and if it leads the customers to take the best choice. This kind of advertisement can lead also to higher prices because it augments product differentiation.

If the traits of the products are the same, company has the ability to comparatively advertise its products. If comparative advertising is illegal, the dominant product can serve the market without needing to advertise, and the minor product may go down. If comparative advertising is legal though, the minor product can improve its customer support and carry on by using advertising that targets the dominant product, which was the case of Hallab and Douaihy.

"As a practice in which marketing communication, typically claiming that the promoted item is superior to one or several important purchase considerations"

(Darouni, 232, 2006)

The information that the customers have about the products can affect the competition and the financial gain. If firms sell products of same qualities, both want to advertise product information that enables consumers to determine their comparative advantages matches. If traits are not the same, the high quality one will not want to reveal

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much information. If legal, the low quality firm rival would like to advertise match information about the competitor. Such comparative advertising may have an impact on interests by letting customers consume low quality products.

The study of the three perspectives cannot but be linked to an ethical one which is the most important consideration when creating an advertisement.

Being ethical can lead the advertisement to be successful and to impress people.

"False, misleading statements and the comparison which unfairly disparage a competitive product or service must be banned"

(Darouni, page 231, 2006)

This matches with United States and European Union legal perspectives where it is stated that *(comparative advertising, where the comparisons are clearly identified, truthful, and non-deceptive, can be a source of useful and important information to consumers and can assist them in making rational purchasing decisions)* and *(Comparative advertising is only permitted in very limited circumstances and when following conditions are met).*

"Uncontrolled advertising risks transforming the individual in the wrong way, giving him that false personality which is so common in today's society, communication can be used as a deadly weapon even".

(Darouni, page 230, 2006)

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One can come to the conclusion that comparative advertising is a beneficial technique that is sometimes necessary for companies to implement in order to garner consumer attention.

Despite the opinions of various legal experts, practitioners and consumers about comparative advertising in Lebanon, we found out that comparative advertising when it is successful, it shines and starts to be noted and recognized by a huge number of people, however sometimes it is successful on different levels but it is not very well noticed by the consumer.

5.2. Guidelines for the Use of Comparative Advertising

The comparison must be a true comparison of same features between one product and service and one or more other products or services. An advertisement must not create a negative impression of the compared-to product or service. For instance; it would not meet the standard:

- To do comparison with a competitor's product that is not present in the market anymore.
- To make a claim that a product will last longer than a competitor's product when the products are of different sizes.

Advertisements should avoid visual images that might leave a negative feeling of other products.

It would be unlawfully disparaging if:

- It shows another product being abused.

COMPARATIVE ADVERTISING IN LEBANON: WHERE TO?

- It exaggerates the difficulty of using another product, when the difference is visible to consumers.

Statements about compared products delivered by a representative should be presented as an individual opinion, or validated by a research to support such statements.

5.3. Types of Claims

All comparative advertising claims must be acceptable. Comparative claims may be considered in three categories:

Starting with the legal perspective, one can state that if a company makes truthful claims in a comparison of its goods to its competitor's, any organization can work on comparative advertising and will have arguments against any claims of unfair competition. But, each advertisement when it is comparative should be carefully reviewed from a competitor's point of view.

To take the economic perspective, one can state that improved consumer information about products can lead to better matching but also higher prices, so additional shopper rate can go increase and decrease, while gains rise. The firm's price falls with more information. Comparative advertising, as it tells the exact information, it helps buyers.

Lastly, from the consumer perspective one can state that the increased information in comparative ads should be beneficial to consumers and increase the chances for better decision making.

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The field of advertising is really wide and assorted. In general, an advertisement is a public note meant to convey information and invite support or some other response. As that suggests, the two purposes of advertising are: to give information and at the same time to convince and influence, and as these purposes are distinguishable both very often are simultaneously present.

Advertising also has an indirect but powerful impact on society through its influence by media. In addition, advertising can play an important role in the process by which an economic system guided by moral norms and responsive to the common good contributes to human growth. The most important and major part is the functioning of market economies, that exist in many parts of the world and which conform to moral standards based upon integral human development and the common good currently seem to be "the most efficient instrument for utilizing resources and effectively responding to needs" of a socio-economic kind.

Comparative advertising is legal and ethical, as long as it is not disparaging and presents the competitor's product in an unfair image. In advertising, "puffery," refers to the exaggerated claims advertisers make for their products and services. Some researchers think of the advertising as "the permissible lie." The issue is that an advertiser may lose market share as a result of a particular claim made by a competitor. Consumers have learned to agree that marketers exaggerate their claims, especially in the Middle East, even though to some this may seem unethical. Advertisers can take their problem to the Better Business Bureau's National Advertising Division, or they can litigate the

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challenger to either get the offending ad withdrawn or for compensatory damages when they can prove market share has been affected.

If the subject will be about fair dealing and disclosure obligations, one can state the following: Disclosure obligations in dealings with consumers are governmental attempts, in the absence of negotiation between businesses and individual consumers, to give consumers information adequate to protect their general legal rights and to promote their other interests. The disclosure obligations prevent businesses both from telling lies to consumers and from keeping secrets from consumers.

The attempts to prevent lies take the form of government regulation of deceptive practices including misleading advertisements. In Europe, comparative advertising was considered a form of advertisement fraught with potential deception and accordingly was largely prohibited or regulated in a strict way.

It is important to note that:

- Comparative advertising, when honest is a source of important information to consumers and assists them in making rational purchase decisions.
- Comparative advertising is a beneficial way that is necessary for companies to implement in order to acquire consumer attention.
- Comparative advertising becomes false only when it leads to unfair competition, and provides wrong information.

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The position on comparative advertising in Lebanon is far from clear, and indeed is quite contradictory. Although some courts have applied the rules of professional and self-regulatory bodies, which allow comparative advertising provided there is no defamation, expressly referring to a competitor's trademark in advertisement may well be considered a break of that company's trademark rights under industrial property law. Until the position is definitely resolved by the courts or preferably by new legislation, the practice of expressly referring to a competitor's trademark in advertising in Lebanon is full of danger. Indeed, although the practice may be considered to serve the interests of consumers and of free trade, it may be still be a violation of trademarks rights, which the trademarks holder may wish to enforce particularly if the infringer is one of advertisers' fiercest competitors.

The most important factor for the success of a comparative advertising is the "word of mouth" it produces and its propaganda on all communication means making of its advertiser, creator and product or service it represents: the "Talk of the Town". Thus increasing awareness on its existence and making it a well-known trademark and unforgettable market player serving the ultimate goal of the advertisement at the first place.

From an ethical point of view the comparative advertising is a very useful technique as long as it serves the best interests of consumers by giving them the tools to make the right product choices. So the thesis will adopt the utilitarian approach of John

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Stuart Mill and conclude by saying comparative advertising is acceptable as long as it generates the greatest good for the greatest number of people.

Last but not least, in the presence or absence of a clear Law, the comparative advertising creator should not wait for the law or governmental censorship to judge the content of his work. Thinking ethically is the main guideline for a fair comparison, thus applying the “Golden Rule”:

“Do unto others as you would have them do unto you”

(Luke 6:31)

5.4. Recommendations for Future Research

Where to go from here?

Most probably more legal work is needed to make comparative advertising an acceptable practice to both the public authorities and the consumers.

Due to time and data availability constraints, this study couldn't go further while the topic has further dimensions to be argued and analyzed. Research tackling boarder's dimensions about comparative advertising would contribute to better understanding of the functioning of such advertising.

The number of the interviewed legal experts and practitioners in the domain need to be increased to have broader perspectives about some strict legal practices on comparative advertising. On the other hand, concerning the sectarian dimension of comparative advertising, it was shocking enough that is why it should be detailed in future studies.

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The second recommendation is to study the top executive officers of the advertising agencies in terms of how they make decisions on comparative advertising now and how they think such decisions should be made in the future.

The third recommendation would be to increase the size of the survey sample so to be able to generalize the results to the population.

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APPENDICES

Appendix A

Questionnaire

The objective of this questionnaire is to gather information on how Lebanese consumers perceive Comparative Advertising.

This information is needed only for academic research. The complete anonymity is guaranteed.

Could you please comment on the impact of the Comparative Advertising on Lebanese consumers and give us opinions and suggestions?

To what extent do you agree or disagree with each of the following statements? (Please circle one answer in each line across):

1 = strongly disagree, 2 = disagree, 3 = undecided, 4 = agree, 5 = strongly agree

1. Comparative Advertising has a direct impact on product/service sales

1 2 3 4 5

2. Governmental censorship is essential

1 2 3 4 5

3. Having a clear Law concerning Comparative Advertising is a necessity

1 2 3 4 5

4. Sectarian society is a major problem facing Comparative Advertising

1 2 3 4 5

5. Lebanese Comparative Advertisements are creative and appealing

1 2 3 4 5

6. Comparative Advertisements can affect or change the consumer's purchasing behavior

1 2 3 4 5

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7. Comparative Advertising should be subject to Self-Control

1 2 3 4 5

8. Comparative Advertisements in Lebanon are deceptive

1 2 3 4 5

9. Direct Comparative Advertising is more likely to incite "The Word of Mouth"

1 2 3 4 5

10. Comparative Advertisements are more abundant now

1 2 3 4 5

11. It is possible to find a formula balancing bylaw, ethical and commercial orientations in one Comparative Advertisement

1 2 3 4 5

12. Censorship affects negatively the creativity of a Comparative Advertisement in Lebanon

1 2 3 4 5

13. Comparative Advertisements should be more often used

1 2 3 4 5

14. Lebanese Comparative Advertisements are the best in the region (MENA)

1 2 3 4 5

15. A comparative Advertisement have changed your personal preference and purchasing behavior to another product

1 2 3 4 5

16. The following are the key success factors for commercial success of a Lebanese Comparative Advertisement (please use a number from 1 to 5 from most important to less important factor)

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	Cast
	Product/Service
	Budget
	Text/Humor
	Concept

17. The main indicators of success of a Comparative Advertisement in Lebanon are:
(Please use a number from 1 to 5 from most important to less important)

	Awareness
	Sales Number
	Awards
	Big number of Likes and Shares on Social Media
	Higher demand on Comparative Advertising

18. In your Opinion, what is the best Comparative Advertisement you have ever seen? Give examples

19. Age Group:

Between 18 – 30 Years 31 – 40Years 41 – 50 More than
50 Years

20. Sex:

Male Female

21. Profession:

22. Organization (Optional):

23. Name (Optional):

Opinions and Suggestions:

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Appendix B

Comparative Advertisement in the EU and its Legal Requirements

(Thress, 2011)

(a) Legal Definition

Although legally defined, the term “comparative advertising” entails serious difficulties. The interpretation of its definition is key. According to Article 2 (c) Directive 2006/114/EC “comparative advertising” *means: any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.*

Comparative advertising is already present when a competitor is made visible in a manner that makes it identifiable. Under Article 4, under which comparative advertising is permitted, “comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met.” By implication comparative advertising is permissible only if the advertisement contains a comparison in the form of an evaluative or equivalence assertion.

(b) Promoting a Counterfeit

An unresolved issue concerns the question whether the marketing of a counterfeit product meets the definition of “comparative advertising.” Regarding its legal definition, comparative advertising is already present if it explicitly or by implication identifies a competitor or goods or services offered by a competitor. In the case of promoting a counterfeit these requirements appear to be fulfilled, in particular if the original brand is well known. On the other hand - as mentioned above - the definition of “comparative

COMPARATIVE ADVERTISING IN LEBANON: WHERE TO?

advertising” should be extended to the fact of the existence of the comparison. Promoting a counterfeit as such cannot be regarded as “comparative advertising” in the legal sense. Even if consumers recognize the original manufacturer, the comparison will not be part of the advertisement itself. In this regard, national associations with a competitor or the goods or services offered by a competitor do not comply. However, this dispute can only be resolved by the ECJ.

(c) Checklist of Legitimacy

The question whether comparative advertising is present has to be distinguished from the question concerning its legal requirements. Article 4 Directive 2006/114/EC states the conditions under which comparative advertising shall be permitted. Note the language of the Directive:

Article 4

Comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:

- 9) It is not misleading within the meaning of Articles 2(b), 3 and 8(1) of this Directive or Articles 6 and 7 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (“UnfairCommercial Practices Directive”).

COMPARATIVE ADVERTISING IN LEBANON: WHERE TO?

The first rule declares that “comparative advertising” may not be misleading. The conditions under which advertising is considered as misleading can be found in two different Directives: Directive 2006/114/EC (Article 3) and Directive 2005/29/EC (Article 6, 7). The applicability of each Directive depends on the addressees of the commercial: whereas the regulations of Directive 2006/114/EC concerning misleading advertising are restricted to commercial practices towards “traders” (see its Article 1), the Directive 2005/29/EC applies exclusively in case of commercial practices towards “consumers” (see Article 1). In case the advertising is directed to traders as well as to consumers, both Directives apply.

10) It compares goods or services meeting the same needs or intended for the same
purpose

This rule contains comparative advertising provisions as to goods or services for the same need. Therefore it is unfair to compare personal or business conditions among competitors. To determine whether a good or service is “for the same need”, the ECJ relies on a “sufficient degree of interchangeability”– in other words: the advertised product has to be replaced by another competitor’s offer.

11) It objectively compares one or more material, relevant, verifiable and
representative features of those goods and services, which may include price.

According to this rule the comparison has to rely on one or more qualities of goods or the services; for example, its price. The advertisement must point out the distinctive

COMPARATIVE ADVERTISING IN LEBANON: WHERE TO?

characteristics of the compared goods or services. The law does not permit companies to advertise by comparing the sales figures of two competing companies.

12) It does not discredit or denigrate the trademarks, trade names, other

distinguishing marks, goods, services, activities or circumstances of a competitor.

Another legal requirement on comparative advertising is that the comparison may not discredit or denigrate distinguishing marks, goods, services, activities or circumstances of a competitor. The former (“to discredit”) has to be understood as an objectively unjustified reduction of appreciation whereas “denigrate” is defined as a statement that includes a disparagement in the form of an adverse value judgment or a damaging statement without any factual basis. In practice the demarcation between an unfair denigration and an allowed comparison of qualities might be very difficult; it is hard to establish uniform standards. Nevertheless it is not permissible to refer to a competitor’s offer expressly while pointing out one's own products' advantages.

13) For products with designation of origin, it relates in each case to products with the same designation.

This rule serves to protect products with designation of origin. In such cases the comparison may only refer to products with the same geographical indication of origin.

14) It does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products

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This rule prohibits comparative commercial practices that take unfair advantage of the reputation of any kind of distinguishing marks of a competitor or of the designation or origin of competing products. According to the “Toshiba/Katun” judgment, the term “other distinguishing mark” shall be considered as any kind of sign used by a trader as long as “the public identifies it as coming from a particular undertaking.”⁹ The object of this rule is to avoid a competitor taking advantage of another competitor’s reputation by referring to its enterprise, products or brands. In this regard the commercial practice must cause a certain association between the promoted products in the sense of an “image-transfer.”

According to recital clause (14) of the Directive 2006/114/EC: “it may, however, be indispensable, in order to make comparative advertising effective, to identify the goods or services of a competitor, making reference to a trademark or trade name of which the latter is the proprietor.” This political assessment illustrates that showing another competitor’s brand or product only shall be considered as “unfair” if other circumstances come into play. In this respect the principles of the ECJ should be noted.

- 15) It does not present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name.

This rule does not prohibit the promotion of a counterfeit product in such a manner as to mislead the addressees into believing that it has been made by another manufacturer when it is not. The opposite is true: according to this rule it is not tolerable to promote one's own product as a counterfeit of another competitor’s product. This assumes that the advertisement itself announces the product as an imitation of a

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competitor's product whereas it is not necessary to describe the product as an imitation by word. However, the advertising should point out that the product neither belongs to the original brand nor that it was manufactured by the same competitor. Insofar, this rule does not apply when someone else's product is shown in the advertisement as a counterfeit.

- 16) It does not create confusion among traders, between the advertiser and a competitor or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor.

This rule protects traders from receiving products of the wrong manufacturer. This rule applies even if the advertiser is not willing to mislead the addressees into believing that the promoted product has been made by another manufacturer. Beyond that, the ECJ already indicated that the term "create confusion" has to be read as "create a likelihood of confusion," an actual confusion therefore is not necessary. The term itself has to be interpreted the way "that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings."

Appendix C

Interviews with Professional Marketers about Comparative Advertising in Lebanon

1st Interviewee:

Sandra Younes

Instructor at Notre Dame University & Senior Art Director

MAC Group Communications

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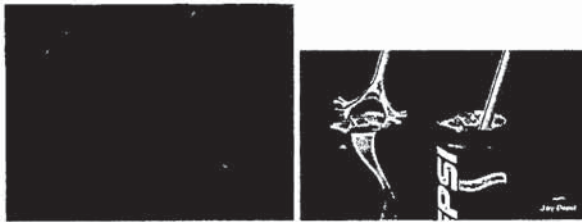
Professional Perspective, Interviewing Marketers, General Managers

1) When do you usually use comparative advertising?

Comparative advertising is used when advertising practitioners and clients approve and accept the fact to use a term called 'knocking copy' and visual, in order to trigger an instant and long term strategically campaign, whereby the name of both brands will be repeated, thus creating brand recognition and will make will become the 'Talk of the Town' achieving high impact where several mediums will cover the situation/campaign specifically the social media, where the audience's interaction, likes and comments will trigger a global exposure and communication between the consumers and brands. Thus, having a strong connection.

2) Do you find comparative advertising useful and beneficial in the market place? Why?

Comparative advertising has been very useful throughout the years, due to the fact that it compares a specific unique brand attribute to the target, which differentiates it from the competitors brand in the same creative visual representation. However, sometimes it focuses on both of the brands' attributes. A very good example of comparative advertising very well known in the United States that no one forgets is the Coca Cola and Pepsi ads, where the boy stands on two Coke cans in order to reach the Pepsi machine to insert his coin!



Moreover, the McDonald's and Burger King ads were also invading the market place with their ads:



3) What are the advantages and disadvantages of using comparative advertising in Lebanon?

To begin with, in Lebanon comparative advertising is not used, due to the fact that it has been forbidden.

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Some of the advantages would be believability, which refers to the extent a consumer can rely on the information provided in comparative advertisements, the level of consumer involvement, which will allow the consumer to interact with the brands and the convenience in evaluation, provided by spoon feeding the consumer with information especially repeating the brand names that does not require extra effort in recall, which leads the audience to brand recognition and retention.

On the other hand, some of the disadvantages of comparative advertising in Lebanon might be damaging the honor and credibility of advertising due to giving a bad reputation for the other brand and thus create a negative buzz that might arise and stay there and will make the people recall it for a long time.

4) How can comparative advertising affect the Lebanese consumer?

Well, it can affect the Lebanese consumer as well as the competitors in a positive and negative way depending on 'who is the target?' at first and 'what is my target watching or reading?'

Lebanon's consumer is very dynamic and active and always looking for a certain excitement in order to talk and chat about especially using the social media. Thus, the role of comparative advertising arises.

Comparative advertising will trigger a word of mouth and will generate a competitive standing for other advertising agencies to join in and be part of this challenge.

5) What do you consider one of the major successful comparative advertisements in Lebanon? Please explain and why?

Advertising agencies have used comparative advertising in their own preserved understanding, yet, they still kept the same meaning.

A very good example is the Douaihy and Abdel Rahman Al Hallab campaign.

It all began when Abdel Rahman Al Hallab's Jounieh branch that opened up at the beginning of July 2013 and it seems their competitors weren't as happy as the customers might were.



So, as you can see the 'body copy' of the ad was the main focus of the campaign "Sar Bi Jounieh? Helou" (which means - He's now in Jounieh? How Sweet. Helou in this context means "sweet" or "how nice") and it was enough to trigger the 'war' between the sweet venues, first of which was Douaihy.

This ad was enough to generate a 'buzz war' photo that went viral across social media and generated a feedback from Douaihy.

Both companies made it clear that they're up to the challenge. So, Douaihy's answer to Abdel Rahman Al Hallab was extremely creative using a humoristic copywriting tone of voice "Wsolet m2akhar 3ala Jounieh yahelou" (you are late coming to Jounieh sweetie - Helou again in this context means "sweet" or "sweetie").

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Keeping in mind that the media booking of both ads were sometimes put so close to each other, which raise more the fact that both ads were listed as comparative advertising.



Abdel Rahman Al Hallab fires back with "el helou law t2akhar bi wojoudo el kilbyetbakhar" (the nice one, even if late, when he arrives, everyone else disappears).



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But it is Sea Sweet, which ended up having the last word "helou 3ana tawachtouna" (in this case "helou" when pronounced "hellou" means "move away" so their line means "move away, you are annoying the rest of us").

In summary, the buzz and the word of mouth generated by this 'war' was at a certain extent inspiring, involving, humoristic, and affective, due to the fact that a huge consumer market became involved in the issue and was participating with the comebacks involved specifically the social media, direct marketing and mobile marketing, where consumers were sending the visuals back and forth.

In my opinion, it also added a certain understanding of advertising for the Lebanese market, keeping in mind that not all targets are educated towards advertising messages, however this comparative advertising campaign proved to be successful for both brands and did not change the consumer's perception towards them; but rather brought awareness for their brand names, which made them stand out in the Lebanese Sweets industry and it was proven to be successful, even both of their sales went up.

2nd Interviewee:

Melhem Rechdan – Senior Marketing and Communication Specialist at OMT

Professional Perspective, Interviewing Marketers, General Managers

1) When do you usually use Comparative Advertising and why?

We use comparative advertising whenever you have two competitive brands which have low levels of differentiation such as Persil vs. Ariel, or Pepsi vs. Coca Cola. Also, we use comparative advertising whenever there is a competitive advantage that a brand wants to show over another brand to explain to the consumer. Whenever there is a high level of competition between two brands and one of the brands wants to use advertising to retaliate on a claim stated by the other competitor.

2) Do you find comparative advertising useful and beneficial in the market place? Why?

No, I do not support comparative advertising unless it is backed up with research facts. In Lebanon, there is a level of unethical usage of comparative advertising because brands which use it do not give clear explanations to their claims and may use unrepresentative samples in research. It is only beneficial when it answers questions of the consumers in a research-focused way.

3) What are the advantages and disadvantages of using comparative advertising in Lebanon?

The advantages are that consumers will be able to position better the brands in their minds and create a differentiation between competitive brands.

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Its disadvantages are that it is mostly misleading to facts and sometimes brands use research samples which do not represent the segment of people to be studied.

4) How can Comparative Advertising affect the Lebanese consumer?

Comparative advertising can leave an impact on the choice of brands at the point of purchase. It may give preference for a brand over its competitors.

5) What do you consider one of the major successful comparative advertisements in Lebanon? Please explain and why?

I truly did not see much successful comparative advertisements in Lebanon. There was only one TV commercial for Bonux where they explained that consumers do not have to follow promotions as they should focus on the product advantages and not the gifts they receive from buying competitive brands.

3rd Interviewee:

Rima Saad, Advertising Instructor at NDU Louaize

Professional Perspective, Interviewing Marketers, General Managers

1) When do you usually use Comparative Advertising and why?

We use comparative advertising when we have 2 competitors of similar products and one of them is trying to emphasize that its brand is better ie. Its competitive edge or USP or value proposition of higher value. This comparative advertising is aimed to the consumer hoping that this consumer will himself be able to judge the competitive edge and at the end understand that one of the brands is of better.

2) Do you find comparative advertising useful and beneficial in the market place? Why?

Comparative advertising is useful and beneficial because it creates competition among the brands and ensures better improvement of product in longer terms since consumers are forced sometimes to analyze the differences between the 2. In addition this competition will create transparency in the market in pricing, product features, services etc.

3) What are the advantages and disadvantages of using comparative advertising in Lebanon?

The advantages of comparative advertising are:

- Competition among companies, brands etc.
- Creating buzz around the brands so clients have the ability to criticize or judge
- Feedback from consumers, sales people, retailers etc. regarding both brands or products

The disadvantages of comparative advertising are:

- Unethical approach since it is like direct criticism of the brands –pinpoint on the negative features of brands, services or companies
- Developing misleading attitudes towards competition

4) How can Comparative Advertising affect the Lebanese consumer?

I believe Comparative advertising will the Lebanese consumer a better consumer in selecting his products or services. As mentioned above, the market will become more transparent and the consumer will not be misleading with the wrong promises of the brand USP.

5) What do you consider one of the major successful comparative advertisements in Lebanon? Please explain and why?

I believe in Lebanon we do not have a lot of successful comparative advertising and the ones we have are not really creative or innovative. The ones we have are basically Proctor & Gamble brands and I do not believe that they are successful. The execution of the concept is not creative and directly the consumer knows both products although they try to conceal the other competitive brands. The approach of the comparative advertising is similar since a long time.

Appendix D

Interviews with Legal Experts

Interview with the judge Antoine Nachef

Question 1:

- 1) Are you familiar with comparative advertising cases? What are the major cases? Please explain.**

Yes, there is jurisprudence in this field from a long time ago, like the case of Persil/Ariel “illicit competition”. There are many legal cases concerning this issue because it is considered periphrastic. This topic stirred much controversy and the company was asked to stop the advertisement, as well as pay a fine “indemnity” since it was considered “illicit competition”. Every product advertised inappropriately will face penal charges. In general, every product presents itself in a specific way and also has the right to advertise and present itself the way it likes to be unique in an appropriate manner; however, its component must be real unlike Fairy/Prill: “Fairy” might state that its detergent washes fifty plates and lasts and lasts, since it considers this advertisement to be attractive to consumers; although in Lebanon, there are no restrictions in mentioning the other detergent or drink but only if the components are accurate. This is, however, uncommon and no one has ever dared and tried such advertisements. I wonder why.

- 2) Many governments around the world use regulations to control false and deceptive advertising, what about Lebanon?**

There is a law in Lebanon called the Audiovisual Law. It was promulgated in 1994 and discusses, in general, advertisements from Article 36 to 42. There is another

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Bill that only covers advertisements but it has been rejected by advertisement companies since it touches the freedom of expression and innovation. However, there is a legislated law in the parliament to organize areas for billboards. Advertisements about tobacco, drugs, anything affecting religion and sects or stimulating excitation or violence, are forbidden as they are against ethics and law.

3) Do you think comparative advertising is unfair in Lebanon in your opinion and why?

In comparative advertising, there's firmness and respect for property. However, counterfeit comparative advertising is immediately forbidden.

We encourage innovation and good ideas and those that have a sense of humor such as "Buzz" "Machawe w Chabeb"; but when there is a misrepresentation of the idea, it is then that there will be a sternness and the advertisement will be cancelled in case of slander or perversion and other advertisements' ideas exploitation. Every advertisement has its independence.

4) What kind of comparative advertising is permitted in Lebanon in your opinion and why?

If the product applies international and health standards, there will be no problem to advertise it as long as it's not showing its positiveness, unless if there is comparison. However, if it wants to compare, it's not allowed to show its pluses at the expense of another product's minuses.

5) Who is responsible of deceptive comparative advertising? Is it the government or Lebanese sectarians (business bosses)?

The responsible persons of “deceptive comparative advertising” make up the censorship committee in the concerned courts. This committee decides whether the advertisement is wrong and unlawful. The authority which monitors the advertisement industry is the Ministry of Economy to protect the consumer. There are special courts to determine whether an advertisement can be televised; which means, they give it the approval and the ministry controls it for any ethical violation, in case there is any.

6) Should comparative advertising be sensed by government or through self-control?

By companies and owners. The self-control is conducted by the ministry which observes any unethical contravention. For example, if “Chabakeh Magazine” puts on its cover an attractive girl photo, the ministry brings it to the attention of the company and reports the case to the specialized companies which, in turn, change the photo and the cover.

Interview with the lawyer Chawki Sassine

1) No, I haven't appealed any case of this type.

2) Yes, there's in Lebanon a consumer protection law promulgated in 2005. It defines deceptive advertising and imposes on it penal responsibilities and sanctions like imprisonment and fine and with, of course, the withdrawal of the advertisement from the market. The most essential in this matter is the protection of the consumer from any mistake that might appear in the advertisement and push him, in a way, to buy the product. He buys the product with some specifications but which are incorrect and deceptive.

The law defines the deceptive advertising in Article 11/659 promulgated in 2005. In accordance to Article 11, the deceptive advertising is the one done by any channel: visual, audible, billboards, TV, etc. Also, it is the advertisement that includes a misstatement about the product specifications, or is stated in terms susceptible to interpretation and explanation. The deficiencies might affect the product's nature, component, and substantial specifications or even its elements such as chemicals that constitute the product. Furthermore, the advertising is also deceptive if the product's source is deceptive. For example, if a medicine is produced in Jordan or Lebanon and was advertised as if it's manufactured in France or Europe, the advertisement would be considered deceptive and is subject to penal charges, prosecutions and sanctions. The deceptive advertising involves the weight, the size, the way of product's manufacturing and, on top of all, the product's expiry date. All those points are necessary and none of them should be forgotten. Article 11 is broad and includes a list of descriptions, which with or without them, there is deceptive advertising.

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3) Lebanon is an independent economic country. Thus, comparative advertising depends on the business market. Any competition is permissible as long as the consumer isn't exposed neither to harm and lies in advertising, nor to slander and offense which might affect other products. For example, the late advertisement of "Helou and Doueihy" is a new type of competitive advertising, without any offense to one another, and that people accepted.

4) Any deceptive advertising is not allowed in Lebanon. However, concerning the comparison in general, the comparative advertising is permitted if only; it is abiding by the conditions I previously mentioned. Usually, most of the comparative advertisements do not mention the other product to avoid harming or being illegally misunderstood.

5) The responsible of consumer protection against deceptive advertising and the responsible of products protection to avoid any harm, is the Lebanese government, specifically the Ministry of Commerce and Trade, and Consumer Protection Directorate which has administrative mechanisms with juridical aspect. This law set two things; first the mediation and second a committee for solving, amicably, controversies that might arise between competitors. Moreover, if the issue had a penal aspect, then it's the court mission to make the judgment. This issue is a pure commercial issue and not at all related to the sectarian or communal condition in Lebanon but it's affected, somehow, by the daily complaints about the courts, administrations and investors dominance.

6) The advertisers and the owners of the product to sell, with the responsible planners, control the advertisement by themselves, to avoid any breach of the law. However in the case of breaching laws, as I had previously mentioned, they should solve the issues by referring back to the administration through the ministry and mediation, or

COMPARATIVE ADVERTISING IN LEBANON: WHERE TO?

to the concerned court. I will give an example: if the owner asks the advertising company to advertise his product that might harm the consumer protection or any other product, then both the advertising company and the product owner are responsible of the illicit advertising. The consumer's protection law mentions in law Article 11, an imprisonment from one to three months and a fine from ten to fifty million LBP, for everyone who transmits and diffuses a deceptive advertisement. Also, the Article 105 of the same law considers everyone who transmits and diffuses a deceptive advertisement, a doer of the action.

Interview with the lawyer Adel Boutros

1) No, I did not work previously in comparative advertising case but I had appealed similar cases in the same field. I'm actually working on a similar case between the international company which is registered in Lebanon Nestle, and another company for food goods in Arab Emirates and specifically in Dubai. I can't mention the company's name to preserve the confidentiality of my client. The problem is the use of the word Crunch, which is attributed to Nestle Company, by the other company. The latter company had used the word Crunch in a certain sentence to promote its product, and this provoked Nestle and made it file a cause against the other company which had chosen me to defend it. In my opinion, the word Crunch can be used anytime and Nestle Company can't monopolize the name or word, especially if it's used in a sentence.

COMPARATIVE ADVERTISING IN LEBANON: WHERE TO?

2) We have our regulations since longtime ago, we also have new laws published in 2005.

This law specialized in commercial property had been through many stages and includes verdicts that protect the consumer from the results of deceptive advertising. Based on responsibility principles in the public law, each consumer has the right to ask for compensation for any damage resulting from the deceptive advertising.

It is considered deceptive if it included a presentation, report or false pretences that are written in a way that leads to trick or delude the consumer. It's also considered deceptive if it used a logo or distinction without permission or imitates a logo.

Nevertheless, in case any of those problems occur, the concerned person has the right to file a legal action in court. This person appoints an expert to detect, explain and report to the court, which according to the advertisement in market, either solves the case amicably or imposes a fine or imprisonment.

This is, of course, excluding the civil rights that the harmed parties or concerned person can ask for. Thus, the deceptive advertising becomes a penal crime defined with its penalty by the law.

3) In Lebanon, the comparative advertising did not get its right as it should, because as per the Lebanese belief: comparative advertising is not acceptable as there is no actual legitimacy to that effect.

The deceptive advertising is immediately forbidden and withdrawn from the market, especially if it harmed, affected other products, or caused any damage for the consumer, more specifically in the field of medicine.

COMPARATIVE ADVERTISING IN LEBANON: WHERE TO?

4) As far as comparative advertising is not prohibited by law and not harming the other party, it is permitted in Lebanon.

5) It shows the cons of others to highlight its pros. The responsible of the deceptive advertising is the one that causes slander or libel to the other product. This latter can, by turn, file a legal action against the responsible of the deceptive advertising and report it to the court and law and the government protects him and gives him its right. No one is above the law.

6) Every company or product's owner has to self-monitor his product since he's aware of what's allowed and what's not by law. In case, any overpass of laws or conflict with another product occurs, this latter has the right to file a cause to solve conflicts between the two and get his right by law.

Translation of the Arabic document attached – April 2, 2014–

Appendix E

Questions of Interview with Legal Experts

- 1) Are you familiar with comparative advertising cases? What are the major cases? Please explain.**

- 2) Many governments around the world use regulations to control false and deceptive advertising, what about Lebanon?**

- 3) Do you think comparative advertising is unfair in Lebanon in your opinion and why?**

- 4) What kind of comparative advertising is permitted in Lebanon and why?**

- 5) Who is responsible of deceptive comparative advertising? Is it the government or Lebanese sectarians (business bosses)?**

- 6) Should comparative advertising should be censored by government or through self-control?**

Appendix F

Questions of Interview with Marketers and Field Experts

- 1) When do you usually use comparative advertising?**

- 2) Do you find comparative advertising useful and beneficial in the market place? Why?**

- 3) What are the advantages and disadvantages of using comparative advertising in Lebanon?**

- 4) How can comparative advertising affect the Lebanese consumer?**

- 5) What do you consider one of the major successful comparative advertisements in Lebanon? Please explain and why?**