

Intellectual Property
Prof. Feroz Ali
Department of Humanities and Social Sciences
Indian Institute of Technology Madras

Lecture - 40
Case Study - Frozen Desserts

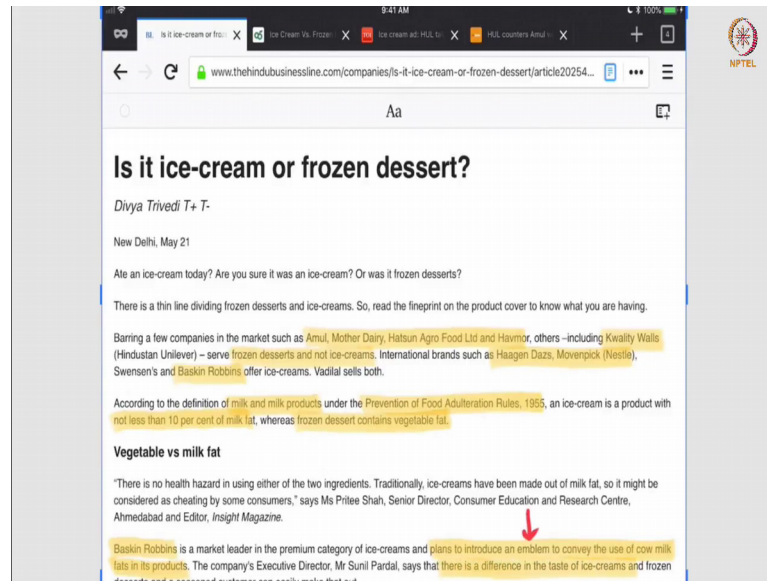
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We have seen that brands communicate information with regard to a product. In this case study, we will look at how the frozen dessert market, which has various players in it has led to litigation and cases with regard to advertisements. And for us, the focus will be on how information that brands portray can lead to situations, where the customers get enormous amount of information about the product.

And also to situations which can be counterproductive for the customers, where because of an established image or an established reputation, the customers may not be fully informed, when the company decides to change its product. Now, the frozen desserts case, which involves Kwaliti Walls and Amul as an interesting example for us to look at.

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Around the year 2011, this news report came up questioning whether certain products fell within the definition of an ice-cream or a frozen dessert. Now, the reason why this came about was largely because of the way in which companies branded their products. Traditionally, products were branded as ice creams; later on some products were classified as frozen desserts, now there were multiple reasons for this.

So, milk and milk products under the prevention of food adulteration rules 1955 states that if you have to call something as an ice cream, then the product should have not less than 10 percent of milk fat. So, if you do not use 10 percent of milk fat, then or alternatively if you use vegetable fat, then you have to call your product as a frozen dessert.

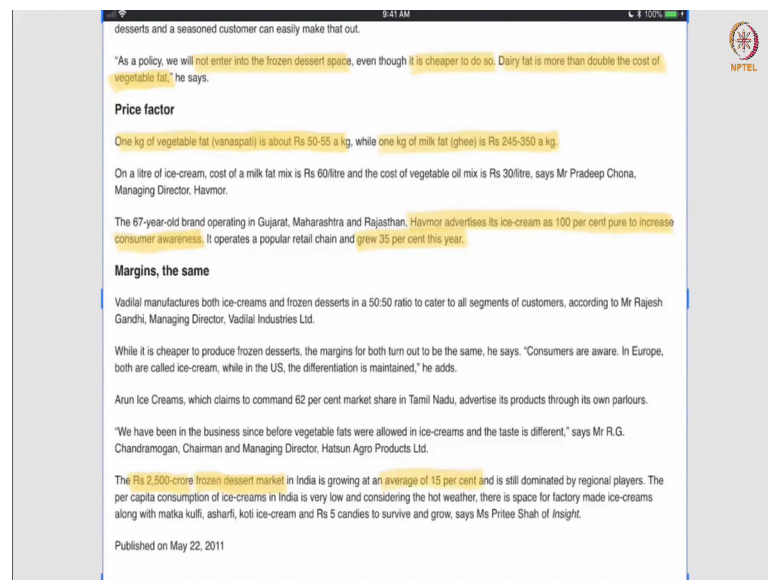
Now, this report came in because, few companies barring Amul, Mother Dairy, Hatsun Food Agro and Hamvor, companies like Kwality Walls would serve frozen desserts and not ice-creams, because the way in which they branded their products, they would not be using milk fat and they would still be selling what could be products, which could be sold along with ice-creams.

And the article goes on to say that Haagen Dazs and Movenpick and Baskin Robbins of offered ice-creams. Now, from a health perspective, there is nothing to worry about, because vegetable fats and milk fat both can be consumed by humans. But, using this

incident Baskin Robbins had stated that it plans to introduce an emblem to convey the use of cow milk fat in its products.

Now, look at the use of the word emblem, which has now been used here to say that they were thinking of using a mark to communicate to their customers that they were using milk fats. And it also adds by saying that there is a difference in taste between ice-creams and frozen desserts.

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And Baskin Robbins goes on to state that as a policy, we will not enter the frozen dessert space, though it is cheaper to do so. And they state that the dairy fat is more than double the cost of vegetable fat, now they seem to be an economic angle to this way in which products are manufactured and they are branded.

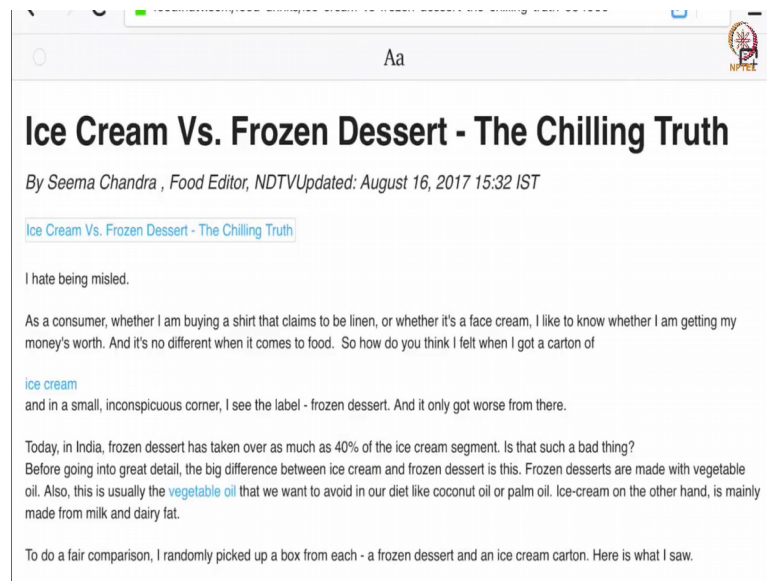
So, there is no problem if you create ice-cream and sell it as ice-cream, it returns when it has milk fat. The problem arises, when you have been traditionally making and manufacturing ice-creams, branding your product as ice-creams and all of a sudden for whatever reason, you choose to now not have milk fats in your product.

Now, technically, you should be calling your products as frozen desserts and you should let the customers know that. So, this is a classic case, where information supplied by brands can be this is a classic case, where information supplied by brands, though they are telegraphic and a shorthand, they could be counterproductive for the customers, when

a brand establishes a reputation for a particular product. So, traditionally, Kwality Walls was in the ice-cream business, when they moved their products to be branded as frozen desserts, still they were some customers, who still thought that Kwality Walls would be selling only ice-creams with milk fat in it.

So, the price factor is further illustrated that 1 kg of vegetable fat costs 50 to 55 rupees, whereas 1 kg of milk fat is three or four times that price. Hamvor advertises its ice-cream as 100 percent pure to increase customer awareness. So, and at around this time, its retail chain grew by 35 percent also, because there was a market because the market required ice-creams and it understood ice-creams as products with milk fat. Now, the frozen dessert market which includes ice-cream and frozen dessert is pitched at rupees 2,500 crores and it is growing at an average of 15 percent a year.

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With regard to the information that the customer derives, it is important to note that both ice-cream and frozen dessert have a label, which shows how they are described.

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The Label Comparison

Ice Cream
Claim: Labels it as Ice Cream on the top of the carton.
Ingredients: Water, milk, solids, sugar, permitted stabilizing and emulsifying agents (412, 410, 407, 471, 466). Contains added vanilla flavors (artificial flavoring substances).

Frozen Dessert
Claim: The larger font says - Creamy Delights: Strawberry. In a corner on the side of the box, it says - Frozen Dessert.
Ingredient List: Water, sugar, milk solids, edible vegetable oil, liquid glucose, vegetable protein, emulsifier - 471, stabilizers - 410, 412, 407
Acidity regulator - 330. Contains permitted synthetic food colors and added flavors. Nature identical and artificial milk and strawberry flavoring substances.

Analysis

For starters, the labeling is unclear. When you see the picture on the carton, you would think it is any ordinary ice cream. Only when you turn it around to look for a title, you see a much smaller font, almost apologetic to be there, and it says - Frozen Dessert.

According to the Food Safety and Standards Authority of India, the definition of an ice cream, *kuuli* or softy ice cream means that the product is obtained by freezing a pasteurized mix, prepared from milk and/or other products derived from milk with or without the addition of nutritive sweetening agents, fruit and fruit products, eggs, etc.

Frozen dessert means the product obtained by freezing a pasteurized mix prepared with milk fat and/or edible vegetable oils and fat having a melting point of not more than 37.0 degree C in combination and milk protein alone or in combination/or vegetable protein products singly or in combination with the addition of nutritive sweetening agents.

So in theory, both brands are correct and are not trying to say they are something they are not.

There are many companies that are making both frozen desserts as well as ice cream. To get a better understanding of the product, I asked Mr. Sapan Sharma, the General Manager of Hindustan Unilever Limited (HUL) on what he thought about the labeling, he was sure that they were following the guidelines and legal requirements laid down by FSSAI, when it came to size of font and placement of their label.

Now, the label of ice-cream states that it is ice-cream on top of the carton and the ingredients include water, milk, solids, sugar, etcetera whereas, frozen desserts, the large font says they are creamy delights. And in the corner on the side of a box, it says it is a frozen dessert. Now, this is a report that is appeared recently in the papers. And the ingredient list comprises of water, sugar, milk, solids, edible vegetable oil, liquid glucose, vegetable protein, and other things.

So, from a customer's viewpoint, when the customer sees the word cream or ice-cream on a product that is frozen, the initial reaction is that it is that it is an ordinary ice cream, but it requires the customer now to look at the fine print. Look at what a frozen dessert is and look at the ingredient list, before it can actually come to a conclusion as to whether the product is an ice-cream or a frozen dessert.

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Ice cream ad: HUL takes Amul to court

Namrata Singh

Mumbai: At the onset of summer season, mercury levels are on the rise with ice cream and frozen dessert makers locked in a legal battle.

[Hindustan Unilever](#)
(

[HUL](#)
) and Vadilal Group have joined forces to take on "Amul" ice cream maker

[Gujarat Cooperative Milk Marketing Federation](#)
(

[GCMMF](#)
) over a television commercial, which allegedly belittles "frozen desserts".

HUL, which markets "Kwality Walls", has filed a case in the Bombay high court against GCMMF, terming the latter's recently launched TV advertisement as "misleading". Vadilal Industries and Vadilal Dairy International, which also manufacture frozen desserts, have a common interest in the matter and are supporting HUL in the suit.

Now, this led to a legal dispute. Amul started advertising that its products contain milk fat and certain other products in the market without actually mentioning Hindustan Unilevers Kwality Walls, it said that they only contain vegetable fat and they went to the extent of saying they contain Vanaspati. And they created advertisements, which we would qualify them as comparative to advertisements, showing the competitors product to be something inferior or using inferior ingredients. Hindustan Unilever limited took Amul to court, now Amul is the brand, whereas the company's name is Gujarat cooperative milk marketing fed.

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HUL, which markets "Kwality Walls", has filed a case in the Bombay high court against GCMMF, terming the latter's recently launched TV advertisement as "misleading". Vadilal Industries and Vadilal Dairy International, which also manufacture frozen desserts, have a common interest in the matter and are supporting HUL in the suit.

HUL has sought immediate removal of the advertisement which, according to GCMMF, was launched to "educate consumers to identify and differentiate between ice-cream and frozen desserts". The advertisement talks about Amul ice creams being made from "real milk" as opposed to "frozen desserts" which are made from "vegetable oil". The advertisement, however, does not name any brand.

In response to TOI's query, an HUL company spokesperson, said: "Amul has been airing a misleading television commercial since March 2017. This advertisement makes factually incorrect statements creating apprehensions among consumers of frozen desserts. The advertisement makes incorrect claims about the usage of 'vanaspati/vanaspati-fat' in frozen dessert products. We wish to clarify that Kwality Wall's range of 'frozen desserts' do not contain 'vanaspati'. In fact, Kwality Wall's range of frozen desserts contain milk/milk solids like ice creams. The only difference is that frozen desserts use vegetable fat instead of dairy fat, which actually makes them healthier as they have lower saturated fat and do not have cholesterol." TOI's query did not elicit a response from Vadilal Group.

When contacted, R S Sodhi, MD, GCMMF, said: "Frozen desserts are masquerading as ice creams. By using low-cost ingredients, they are misleading consumers who are looking for real product. We are trying to make consumers aware of the difference." Sodhi said the company will not be "intimidated" by the legal notice of HUL.

"It is unfortunate that Indian companies which genuinely work in interest of milk producers and consumers alike are being threatened with legal suits for airing facts. It is our responsibility to educate customers about 'analogues' products so that consumers know what they are purchasing. However, being a dairy cooperative, it is a part of mandate to promote the goodness of milk and milk products so that the future of millions of poor milk producers of our country is protected," Sodhi said.

The debate on which is healthier—milk fat based ice creams or vegetable fat based frozen desserts—is not new. When milk fat is used along with milk solids, the product falls under the definition of "ice cream", whereas when vegetable fat is used in addition to milk solids, the product is termed as "frozen desserts".

While on one hand, GCMMF is conveying the message of what it believes to be true, through advertisements which claim milk fat is better than vegetable fat, HUL, on the other, has put up on its brand's website the benefits of vegetable fat as opposed to milk fat.

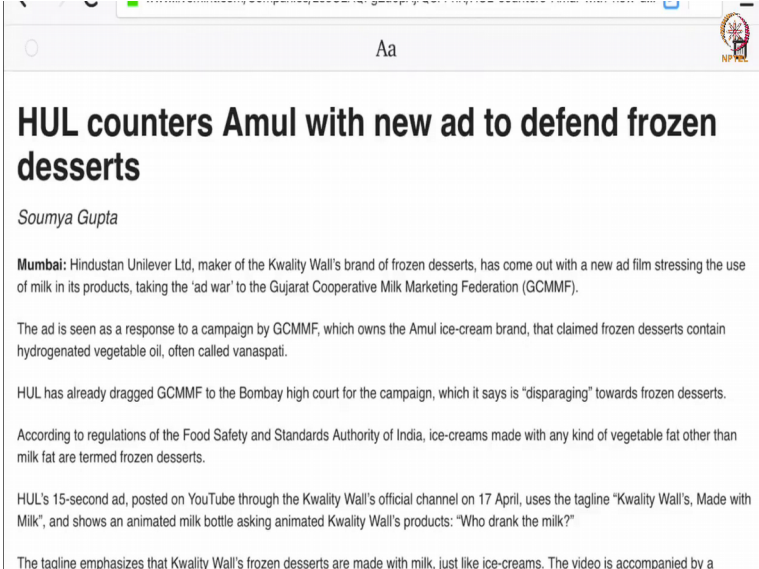
In its case before the Bombay high court, HUL stated that Amul's recently launched TV advertisement as misleading. And asked for the immediate removal of the advertisement, whereas Amul had mentioned that the reason it launched the advertisement campaign was to educate the consumers to identify the difference between ice-cream and frozen desserts.

The advertisement talks about Amul ice-creams being made of real milk as opposed to frozen desserts, which were made of vegetable oil. The advertisement did not name any brand. So, had they named the brand, then it would have fallen within a different category, it would have been a disparaging advertisement now, this is still in the realm of comparative advertisement.

HUL said that the advertisement makes incorrect claims on the usage of Vanaspati in frozen dessert products. And Kwality Walls mentioned that it does not contain Vanaspati, its products do not contain Vanaspati. Whereas, Amul held that frozen desserts are masquerading as ice-creams, they involve low cost ingredients and it misleads the customers, who are looking for a real product.

And we are trying to make consumers aware of the difference. In response, HUL had put on its brand's website the benefits of vegetable fat as opposed to milk fat. Now, this was one of the responses that HUL had Kwality Walls had in response to Amul's comparative advertisement.

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The image is a screenshot of a news article. At the top, there is a browser address bar with 'Aa' and a logo on the right. The article title is 'HUL counters Amul with new ad to defend frozen desserts'. Below the title is the author's name, 'Soumya Gupta'. The main text of the article discusses the legal and marketing dispute between HUL and Amul regarding frozen desserts. It mentions that HUL has filed a case in the Bombay High Court and that Amul's products are made with milk, unlike HUL's products which use vegetable oil (vanaspati). The article also notes that HUL's advertisement claims that Amul's products are made with vegetable fat, which is misleading according to Indian regulations.

HUL counters Amul with new ad to defend frozen desserts

Soumya Gupta

Mumbai: Hindustan Unilever Ltd, maker of the Kwality Wall's brand of frozen desserts, has come out with a new ad film stressing the use of milk in its products, taking the 'ad war' to the Gujarat Cooperative Milk Marketing Federation (GCMMF).

The ad is seen as a response to a campaign by GCMMF, which owns the Amul ice-cream brand, that claimed frozen desserts contain hydrogenated vegetable oil, often called vanaspati.

HUL has already dragged GCMMF to the Bombay high court for the campaign, which it says is "disparaging" towards frozen desserts.

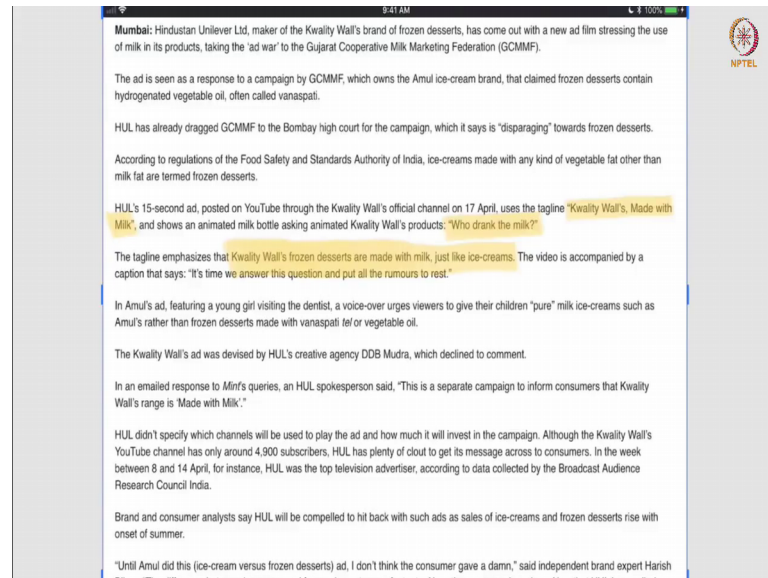
According to regulations of the Food Safety and Standards Authority of India, ice-creams made with any kind of vegetable fat other than milk fat are termed frozen desserts.

HUL's 15-second ad, posted on YouTube through the Kwality Wall's official channel on 17 April, uses the tagline "Kwality Wall's, Made with Milk", and shows an animated milk bottle asking animated Kwality Wall's products: "Who drank the milk?"

The tagline emphasizes that Kwality Wall's frozen desserts are made with milk, just like ice-creams. The video is accompanied by a

HUL did not stop there, HUL countered Amul's ad with its own ad. HUL came up with a new ad stressing the use of milk in its products.

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HUL came up with an ad with the tagline Kwality Walls, made with milk and shows an animated milk bottle asking animated Kwality Walls product, who drank the milk. Now, this was done to show that Kwality Walls frozen desserts are made with milk just like ice-creams. Now, the effect of this ad campaign goes to show a function that is traditionally done by trademarks.

Trademarks when they are used, they signify information about the product, Kwality Walls was traditionally an ice-cream manufacturer. So, when they moved from manufacturing ice-creams to frozen desserts, they give an impression that they continued to manufacture frozen, they gave an impression that they continued to manufacture ice-creams, while they should have been called as frozen desserts as per the prevention of food adulteration rules. Because, they did not do it or probably they did not do it in a way in which it should have been conspicuously done.

Amul used it to its advantage to make an ad campaign and with the purpose of educating the customers. So, the short point is though brands can be a source of shorthand information, brands can also not convey information, when it comes to certain products. And this is where the competition would step in as we had seen in the case of Amul stepping into say that we have come up with this campaign to educate the

customers. So, the shorthand way in which brands communicate can also be counterproductive to customers in certain cases.