

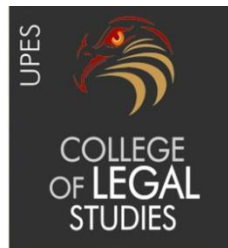
***MISLEADING ADVERTISEMENT AND ITS IMPACT ON
CONSUMERS IN INDIA***

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Submitted under the guidance of: Prof. Shikha dhimri

This dissertation is submitted in partial fulfillment of the degree of

B.B.A., LL.B. (Hons)



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I would also like to thank her for her active words of advice and her guidance not only for this report but also for my future and career.

CERTIFICATE

This is to certify that the research work entitled “**Misleading Advertisement and its impact on Consumers in India**” is the work done by Akash kumar srivastava under my guidance and supervision for the partial fulfillment of the requirement of B.B.A., LL.B. (Hons) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

Prof. Shikha dhimri

Asst. Professor

Date

DECLARATION

I declare that the dissertation entitled “**Misleading Advertisement and its impact on Consumers in India**” is the outcome of my own work conducted under the supervision of Prof. Shikha Dimri, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

Akash kumar srivastava

Date

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ABBREVIATION

IJMC Communication	:	International Journal of Journalism and Mass
LINTAS	:	Lever international Advertising Services
AAAI	:	Association of Advertising Agencies of India
AIR	:	All India Radio
EMMC	:	Electronic Media Monitoring Centre
AAAI	:	Association of Advertising Agencies of India
ABC	:	Audit bureau of Circulations
FSSA	:	Food Safety & Standards Act
BOG	:	Board of Governors
CCC	:	Consumer Complaint council
TRAI	:	Telecommunication regulatory authority of India
IPC	:	Indian Penal code
CrPC	:	Criminal procedure code
CPC	:	Civil procedure code
COPRA	:	Consumer protection Act
ICA	:	Indian contract Act
MRTP	:	Monopolies and restrictive trade practices Act
FTC	:	Federal trade commission
Sec.	:	Section
USA	:	United States of America

LIST OF CASES

- *Tata Press Ltd. V. Mahanagar telephone Nigam Ltd*
- *Bhupesh Khorana V. Vishwa Buddha Parishad*
- *Hamdard Dawakhana's case*
- *Indian Express Newspaper's case*
- *Reckitt Benckiser India Ltd V. Hindustan Unilever Ltd*
- *Ajay Gautam V. Amritsar Eye Clinic & 6/6 Lasik Laser Centre, Dehradun & Ors*
- *Kirloskar Pneumatic Company Ltd. V. National Thermal Power*
- *Bajaj Auto Ltd & Anr V. Pankaj Kumar*
- *Dabur India ltd. V. Emami Ltd.*
- *Pepsi Co. Inc. & Ors V. Hindustan Coca cola Ltd. & Anr.*
- *Dabur India Ltd. V. Colortek Meghalaya Pvt Ltd*
- *Colgate Palmolive Co. & Anr. V. Hindustan Unilever Limited*
- *M.R. Ramesh V. M/s Prakash moped house and Ors*
- *Proctor & gamble products v. Raj deo Bhardawaj*
- *Coca-Cola Co. v. Tropicana Products, Inc*
- *Rhone-Poulenc Rorer Pharmaceuticals, Inc. v. Marion Merrell Dow, Inc.*
- *S.C. Johnson & Son, Inc. v. Clorox Co.*

CHAPTER I - INTRODUCTION

“Advertising” is nothing but the method of attracting the attention of consumers. Advertisement having its origin from the Latin word “Advertere” which means “to turn the minds of towards”.

As per numerous authors and scholars have tried to project the better definition to the term “Advertising” through numerous surveys and techniques and through knowledge and practicality.

As per *RICHARD & CURRAN* –

“Advertising is a paid , mediated form of communication from an identifiable source, designed to persuade the receiver to take some action, now or in the future.”¹

Here the author has defined the word “mediated communication” as any form of communication except person to person communication, whether it be through print such as pamphlets , placards, hoarders or it be through electronic media such as through television or internet advertising.

However this definition is being criticized as the advertising can also be done through person to person as in the case of viral Advertisement and moreover as the definition states that it’s a paid form of communication, however the advertisement can also be an unpaid one.

This criticism has been resolved by the definition proposed by *KARIMOVA* which states -

“Advertising as a text, a framing of text, and construction of message by the “observer” who ascribes to the message a meaning of promotion within the specific framing which is created by the observer him/herself.”²

However such definition was put up in a broader manner and thus neglecting the intent and essence of advertising.

¹ Gulnara Z. Karimova, *Defining advertising: A carnivalesque perspective*, IJMC 2, 1-10 (2014).

² Ibid 1

As per the *AMERICAN MARKETING ASSOCIATION*-

"Advertising is any paid form of non-personal presentation and promotion of ideas, goods and services by an identified sponsor".³

As per another scholar *WILLIAM J. STANTON*-

Advertising consists of all activities which involves in presenting to a group, a non-personal, oral or visual, openly sponsored message regarding disseminated through one or more media and is paid for by an identified sponsor."⁴

the definition proposed by Stanton was a much commercial definition relating to the commercial aspect of advertising. The above definition depicts the true nature of advertisement. This is a powerful element as it conveys the true information and promotion to the consumers in the rightful manner.

From the above definition the concept that can be inferred about advertising is that advertising is a tool of marketing through which the information about the characteristics of the product is been communicated to the prospective customers with a view to increase the sale volume or sale of a particular product.

From the plethora of definitions been illustrated by numerous scholars and authors the general concept of advertisement could be easily inferred which is that Advertising is

- A paid form of publicity been done by the owner by himself or through a sponsor.
- The advertisement is eventually targeted for the increase in the sales
- This is non- personal and is directed towards a mass of people or a particular segment of people or public, may be the lower class, may be the higher class, may be the old-aged people, may be the child segment or any other as per the product specifications.

³ University of Mumbai, INTRODUCTION ADVRTISING, 1 , http://www.mu.ac.in/myweb_test/sybcom-avtg-eng.pdf

⁴ Ibid 3

- Advertisements are identifiable with their sponsor or originator which is different from the case of publicity or propaganda.

HISTORY OF ADVERTISEMENT

The origin of advertising subsists from a long period in India, even prior to 19th century. In India, during Emperor Asoka's reign, stones or pillars were used for making public announcements- a type of advertisement. But this can be marked with the 1st newspaper publishing started in the 19th century. In 1905 the 1st advertising agency B.Dataram and Company was incorporated in Mumbai followed by the establishment of numerous agencies such as,

- Indian Advertising Agency in 1907,
- Calcutta Advertising Agency in 1909,
- The S.H.Bensen in 1928,
- The J. Walter Thompson Associates through the Indian associate, Hindustan Thompson Associates in 1929,
- Lintas (Lever international Advertising Services) in 1939 and
- McCann Erikson in 1956.

Now, as against 14 Advertising agencies that persisted in 1914, there was a threefold increase in it with 45 agencies in 1944. However, the gross annual media billing was just Rs. 5 crore. This indicated that the early stages were marked with a slow growth of advertising. Among the reasons for this sluggish growth were the unfavorable attitudes of the companies towards advertising, limited market, slow pace of industrialization and lack of competition. In 1931, The first full-fledged Indian advertising agency was established. The increase in competition demanded an improvement in the quality of advertising work and services. Moreover the concept of sending employees to abroad for the purpose of training started so as to improve the art-work and copy illustration. In 1936, The AIR started telecasting various programmes. In 1939, The Indian and Eastern Newspaper Society was founded to promote & protect the legitimate interests of the

newspapers and to deal collectively with the 28 Government, agencies and the advertisers. Ultimately, by 1941, Indian Languages Newspapers Association was formed to deal with the problems of Indian language newspapers.

After World War II, the political and economic scenario underwent a sweeping change and consequently the scarcity that was prevailing in Indian economy gave much impetus to the growth and development of small industries.

In 1945, the Association of Advertising Agencies of India (AAAI) was established to raise the standards of advertising and the regulations of advertising practices through a code of conduct. Audit Bureau of Circulations of India (ABCI) was started in 1948, on the lines of ABC of America. In 1952, The Indian society of Advertisers was formed to promote the interests of advertisers so as to raise the standard of Indian advertising. Until independence, the number of large - scale industries in India were limited with some foreign cosmetic Industries in major cities. After Independence, the implementation of the Five Year Plans and several factories and large scale projects, consequently the production and transportation facilities increased tremendously. These spurts marked the beginning of the 'Golden Age' of advertising in India⁵ Till 1970 due to non-exemption of taxes on Advertisement, its growth was been constrained but further as the new economic policies and foreign investments with multinational companies kicked in, this sector bloomed to its excellence. In 1976 the first advertisement appeared on the television. Moreover, as the economy opened in the 1980s there was a sudden growth in the number of alliances with multinational agencies resulting into an expansion in advertising though foreign network participation in agency ownership was limited. The 1st outburst of public sector advertising was marked in the 1980`s with the landmark launch of the colour television on August 15. 1982. Then the use of Colour printing in the newspapers & magazines also brought about a new hue to their readability.

To undergo the serious role of advertising in competitive scenarios, the Advertising Standards Council of India (ASCI) was born.⁶ Thus, 1980's also witnessed the first round

⁵ Esther Thorson, *Advertising Age - The Principles of Advertising at Work*, Chicago, 22-26(1992),

⁶ S.R. Madhu, *The Visible Persuaders- An Overview of Advertising in India and the U.S.*, Spain,18 (1996)

of sponsored television programming. From a ₹100 million Industry in 1955, to ₹1600 million in 1978 and to a ₹50,000 million industry in 1999, the advertising industry has traversed a long way.⁷

FEATURES OF ADVERTISING

The basic features of Advertising are:-

1. *Communication* - Its non personal communication targeting the masses as a whole or a particular segment of the masses. The segment can be chosen on the grounds of age, wealth, health etc.
2. *Information* - The concept of caveat emptor kicks in as the information should be rightfully conveyed and shall be authentic. The information about the benefits of the product is been communicated to the consumer.
3. *Persuasive* - The Advertisement is been created with the aim to persuade the consumer to buy the product or services. An advertising process attempts at converting the prospects into their customers. Its thus an indirect salesmanship and thus essentially a persuasion technique.
4. *Profit Maximization* – This method is used to increase the sales of the product or increase the sale margin by promotion.
5. *Non personal Presentation* – As the personal appeal is diminished in advertising thus the its non personal.

⁷ S.A.Chunnawalla, Advertising, *Sales and Promotion Management*, Himalaya Publishing House, New Delhi, 158-159 (2002).

6. *Identified Sponsor* – the payer of the advertisement is known as the identified sponsor which could be a firm or a company or an individual.

7. *Consumer Choice* – it enables the consumer to choose from the best and distinguish the product available as per the requirements of the product.

8. *Element of Marketing Mix* - Advertising is an upcoming and one of the most important element of promotion as it relates to information and choice imparted to the consumers. Advertising has proven itself as a great tool to sell goods and services.

9. *Art, Science and Profession* -Advertising is an art as it represents the field of creativity and imagination. It's a science because it has a body of organized knowledge and is a profession due to its professional bodies and code of conduct for members.

OBJECTIVE OF ADVERTISEMENT

In spite of the objective of selling the product or increasing the sale ratio or market for a company or a firm or an individual there are numerous other objectives. They are:-

1. *Introduction to a new product* - creating interest for a new product to be launched among the prospective customers or buyers.
2. *Support* – it may be used to extend a hand of support to the personal selling programmes and maybe used as a method to open customer's doors for the salesman.
3. *Extent* – to outreach to a variety of people in the corners of the world which may be inaccessible by salesman.
4. *Entrants* - To enter into a new market or even to attract a new group or even segment of customers.
5. *Competition* - To light up the competition in the market and further to increase the sales.
6. *Goodwill* - To enhance the goodwill of an enterprise by promising quality, quantity, service, reliability, technology in products and services.
7. *Dealer relations* - Advertising supports the dealers relations in selling the product. As they are attracted towards a product which has been advertised effectively.
8. *Prevention* - To warn public against the imitation of an enterprise's products or services.

9. *Research* – Advertisement stimulates the research and development activities as all competitors' plans to differentiate its product through advertisements in the competitive market.
10. *Education to people* – its informative in character and recent trends on educating the people through advertisement is also quite fascinating and a step towards a better democratic country.
11. *Revenues to press* – It's an important source of revenue to the publishers and magazines as it enables increase of circulation of the publication by selling them at lower rates.

MODES OF ADVERTISING

The question that arises is what are the modes in which the advertisement can be made to the public?

The advertising is been done to a mass of people thus is entitled for the mass media methods of communication. The messages are communicated to the masses or to the target audiences through the following:-

1. Print media – this consists of advertising through newspapers, magazines, journals, handbills, pamphlets etc.
2. Electronic media – it consists of advertising through Radio, television, motion pictures, videos, internet, etc.
3. Outdoor media – It consists of posters, handbills, stickers, hoardings, local cinema house, transit media etc.
4. Direct mail – it consists of brochure, letters, and return cards being addressed to consumers.

MISLEADING ADVERTISEMENT

The advancement, globalization, marketing and the complexities of today's modern era has made advertising the most important tool for advancement and has become a major concern for the corporate giants. With the advancement of technology, the era has transformed from the one having the concept of "Caveat Emptor" to the one of the present where the advancement and fierce competitiveness has engulfed the whole concept of caveat emptor finally resulting into the buyer been misled, duped, deceived all the time. The concept of buyer been aware has diminished. The lack of responsibility towards the consumers and the wholesome intent of profit motive has subsequently emanated as the major concern. The masses are been hampered as a whole as the targeted personnel are been deceived and misled.

Misleading advertisement are advertisement that deceive or likely to deceive anyone to whom it is communicated to. It effects the choices of the consumers on what they shall buy. The advertisement if creates, exploits or increases a false belief in a consumer then such an advertisement is misleading. The facts stated may be literally true but if it creates a false impression then also such an advertisement is taken to be misleading in nature.

Thus following are the plethora of instances when an advertisement is regarded to be misleading:

- When the claim in the advertisement is a false and frivolous claim. Misleading claim can be characterized into puffery claim, data based claim and testimonial claims. Puffery claims are the ones which has no scientific basis, data based claim as the name suggest are based on the data, statistics or scientific basis, and testimonial claims are the ones involving signature, names, photographs.⁸
- When the claim in the advertisement is true but still creates a false impression on the people.
- When there is an omission or a practice to mislead.

⁸ Mrs Vaishali Kathuria billa, *Advertising ethics and law*,80,

<http://www.ddegjust.ac.in/studymaterial/pgdapr/pgdapr-103.pdf>.,

According to US (FTC) Federal Trade Commission, a deception occurs when:

- there is practice, misrepresentation, or omission that is likely to mislead the consumers;
- the consumer is acting responsibly in the given circumstances; and
- furthermore, the practice is material and consumer injury is likely possible because of the misrepresentation projected due to which the consumer chose the path which caused him/her an injury and if such deception wouldn't have been made the consumers would have chosen differently.

To consolidate the whole concept of misleading advertisement, the misleading advertisement can be sorted down to the three approaches or views of unjust advertising:

1. FRAUD
2. FALSITY
3. MISLEADINGNESS

The 3 approaches encircles the advertiser, the advertisement and the consumer beliefs about the product and moreover runs parallel.

Fraud : The malafide intent of the advertiser to gain profit from the consumer in a manner which is deceptive in nature. The intent of the advertiser is to deceive the consumer and has profit motive behind doing the same. However the intent is quite difficult to prove as there is no proof as such if no advertisement is been communicated.

Falsity: It depicts a claim fact discrepancy. It can be either related to price or product or any other. Different types of claim are as discussed earlier-puffery claim, data based claim or testimonial claim. This approach is more viable when there exist a regulatory framework to issue guidelines and standardize the meanings of words.

Misleadingness: This third approach deals with the consumer beliefs.it requires the observation of the false consumer belief in conjunction with the exposure to the advertisement. While the Falsity on one hand is a claim based discrepancy, misleadingness on the other is a belief based discrepancy. The consumer through the advertisement is made to believe something which is deceitful by the literally correct statements used in the advertisement.

Thus these three approaches helps to define a misleading advertisement.

REGULATORY FARMWORK OF ADVERTISEMENT

Advertisement being a facet of Article 19, Right to Information. Advertising communicates information of the product and its cost and other information, thus comes within the purview of Article 19(1). On one side is the right of the advertising and on the other flip is the right of the consumers to be well and rightfully informed. The apex court in the case of *Tata Press Ltd. V. Mahanagar telephone Nigam Ltd*⁹ observed Advertising as a right of freedom of speech and Expression . Justice Kuldip singh stated that-

“Article 19 (1)(a) not only guarantees Right of freedom of speech and expression but it also protects the right of an individual to listen, read and receive “ commercial speech””.

Relying on the combined ruling of *Hamdard Dawakhana's case*¹⁰ and the *Indian Express Newspaper's case*¹¹ it concluded that "commercial speech" cannot be denied the protection of Article 19(1) (a) of the Constitution merely because the same are issued by businessmen.

At present, there is no central statutory agency or any uniform legislation regulating the advertising industry in India. The Indian advertising market as a whole is regulated and controlled by ASCI ,a non-statutory body. In the absence of a uniform integrated legislation, it is necessary for advertisers to ensure that the advertisement is in compliance with all national and local advertisement laws. The ABC of India is a voluntary organization which works in developing audit procedures to verify the circulation data published by those newspapers and periodicals which have earned the right to display its emblem.

Advertising Standards Council of India (ASCI)

⁹ 1995 SCC (5) 139

¹⁰ 1960 SCR (2) 671

¹¹ 1985 SCR (2) 287

ASCI is a voluntary self-regulatory council which came into existence in 1985 to regulate advertising and to enhance the public confidence subsisting in advertisements.

The objectives of the council is to:

- To ensure the truthfulness and honesty of claims and representations made by advertisements been published.
- To ensure that advertisements are not offensive to any of the generally accepted standards of public decency.
- To safeguard against any indiscriminate use of advertising been done for the promotion of products regarded as hazardous or detrimental to society or to individuals.
- To ensure that advertisements observe fairness in competition or is not anti competitive in nature, so as to inform the consumer on choices in the marketplace while observing the canons of generally accepted competitive behavior in business

Audit bureau of Circulations

The ABC founded in 1948 is a not for profit, voluntary organization consisting of Publishers, Advertisers and Advertising Agencies. It has done pioneering work in developing audit procedures to verify the circulation data published by those newspapers and periodicals which have earned the right to display its emblem.¹²

The main function of ABC is:

- To evolve, lay down a defined standard and uniform procedure by which a member publisher shall compute its net paid sales.
- The circulation figure so arrived at is checked and certified by a firm of Chartered Accountants which are approved by the Bureau.

¹² Audit bureau of circulations,2013, <http://www.auditbureau.org/about-what-is-abc.html>

- Finally, the Bureau issues ABC certificates in every six months to those publishers whose circulation figures confirm to the rules and regulations as set out by the Bureau.

Other statutory regulation

Complementing the **ASCI Code** are Indian statutory laws governing the specific media, specific populations, and specific goods and services. The most significant of these laws are:

Laws Governing Media

- The Press Council Act, 1978
- Cable Television Network Rules, 1994
- Electronic Media Monitoring Centre (EMMC)
- Code for Commercial Advertising on Doordarshan and AIR
- Code of Conduct of the News Broadcasters Association
- Norms for Journalist Conduct issued by the Press Council of India

Laws Protecting Society and the Consumer

- Consumer Protection Act, 1986
- Emblems and Names (Prevention of Improper Use) Act, 1950
- Companies Act, 2013
- Young Persons (Harmful Publications) Act, 1956

- Indecent Representation of Women (Prohibition) Act, 1986
- Standards of Weight & Measures Act, 1976
- Laws related to intellectual property rights (IPR)

Industry-Specific Laws

- The Drugs and Cosmetic Act, 1940
- The Drugs and Magical Remedies (Objectionable Advertisements) Act, 1954
- The Transplantation of Human Organs Act, 1994
- The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
- Advocates Act, 1961
- Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992
- Securities and Exchange Board of India Act, 1992
- Public Gambling Act, 1867, the Lotteries (Regulation) Act, 1998 and the Prize Competitions Act, 1955
- The Prize Chits and Money Circulation Schemes (Banning) Act, 1978
- The Food Safety & Standards Act, 2006
- Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003
- Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002

Conclusion

Thus the regulatory authority in India is the ASCI in consonance with the legislation been enacted by the legislature. However recent survey of FICCI projects that the self-regulatory framework of the ASCI is not effective. 54% favored that its not effective and around 13% voted that it requires amendments to become effective.¹³

Moreover in the survey the people stated that there is a requirement of a new government backed regulatory body.¹⁴

However the white paper presented in the Lok Sabha by CII is of the expression that ASCI is effective but they also recommend for some effective changes to be made. CII White Paper suggests strengthening self-regulation for controlling misleading advertising.¹⁵

This dissertation shall further try to simplify the concept and moreover will compare the laws of India and US with regard to dealing with the issue of misleading advertisements.

¹³ FICCI, Pg5, http://www.ficci.com/Sedocument/20240/Survey_on_Advertising_Standards.pdf

¹⁴ FICCI, Pg5, http://www.ficci.com/Sedocument/20240/Survey_on_Advertising_Standards.pdf

¹⁵ CII White Paper on "SelfRegulation in Advertising in India- A critical Evaluation" – Mon 1 Oct, 2012

CHAPTER II - MISLEADING ADVERTISEMENT - THE CURRENT SCENARIO

INTRODUCTION

There is a sheer line between the advertisements having a lawful “fair sport” and the one which crosses the same is deemed to be unlawful “turkey shoots”.

An advertisement accompanied with any frivolous, deceitful, untruthful statement becomes misleading advertisement. When an advertisement is intended by the advertiser to deceit the consumer for gaining profit from the same or even to disparage its competitors, such an advertisement is termed to be misleading advertisement. The advertisement with false statements and deceitful or malafide intention through which it persuades the consumer belief leading to an injury is termed or classified to be misleading.

As per the different statutes such misleading advertisements are been prohibited. Although there is no particular definition to the same but indirectly the statutes had defined what shall be termed as misleading, but it is constrained to the extent of the area of the act.

False advertising is any published claim that is deceptive or untruthful. Misleading advertising in any published claim that gives a consumer an incorrect understanding of the product. "Truth" refers to essentially that customers have the right to know what they

are buying, and that all necessary information should be on the label as well as in the content of advertisement should be correct.¹⁶

However as per the general concepts, misleading advertisement can be sorted down to the three approaches or views of unjust advertising:

1. FRAUD
2. FALSITY
3. MISLEADINGNESS

The 3 approaches encircles the advertiser, the advertisement and the consumer beliefs about the product and moreover runs parallel.

Fraud : The malafide intent of the advertiser to gain profit from the consumer in a manner which is deceptive in nature. The intent of the advertiser is to deceive the consumer and has profit motive behind doing the same. However the intent is quite difficult to prove as there is no proof as such if no advertisement is been communicated.

Falsity: It depicts a claim fact discrepancy. It can be either related to price or product or any other. Different types of claim are as discussed earlier-puffery claim, data based claim or testimonial claim. This approach is more viable when there exist a regulatory framework to issue guidelines and standardize the meanings of words.

Misleadingness: This third approach deals with the consumer beliefs.it requires the observation of the false consumer belief in conjunction with the exposure to the advertisement. While the Falsity on one hand is a claim based discrepancy, misleadingness on the other is a belief based discrepancy. The consumer through the advertisement is made to belief something which is deceitful by the literally correct statements used in the advertisement.

Thus these three approaches helps to define a misleading advertisement.

¹⁶ George Cheriyan (Team head) Deepak Saxena & Amarjeet Singh, *Consumer Unity & Trust Society* ,7, http://cutsinternational.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf

Further, such misleading advertisements can be distinguished into two categories:

1. The one which violates the consumer`s right to information and choice.
2. The one which tout health cures and the drugs of questionable efficacy

The one which violates the consumers right to information is the one where the consumer is been deluded by the advertisement being communicated and furthermore is capable of causing financial loss and mental agony. Some of the examples of such are:

- Quoting misleading prices
- Disparaging a rival product
- Making exaggerated product claims
- Using false paid testimonials
- Comparative advertising leading to defamation of the rival product or company

*In Reckitt Benckiser India Ltd V. Hindustan Unilever Ltd.*¹⁷

The plaintiff in the present matter is a manufacturer of the famous liquid under the trademark of DETTOL for over 70 years and has gained a reputation in the market and has recently come up with a new product known as DETTOL healthy KITCHEN dish and slab gel. For the purpose of promotion the plaintiff came up with a concept on television comparing the germ killing capabilities of its product and the defendant`s product VIM liquid. Reacting to the same the defendant filed a suit against the plaintiff for disparaging advertisement before the Calcutta high court which was disposed off with a consent order.

Further the defendant came up with an advertisement which was been published in the Sunday times edition dated February 24, 2013 in which the defendant has purportedly disparaged DETTOL and the plaintiff. The defendant has equated its product to a harsh Antiseptic and has further misrepresented facts in the same. Thus the plaintiff sought for

¹⁷ (2013) 55 PTC 156 (Del)

an interim injunction restraining the defendant from publishing the advertisement or publishing any depiction or indicia which disparages the goodwill of the product.

The court further decided the following relying on the precedence been set up in a number of cases by the Supreme Court. In the case of *Dabur India Ltd. V. Colortek Meghalaya Pvt. Ltd and Godrej Sara Lee* , while referring to the guidelines laid by the apex court regarding the puffery of a product stating that-

- a) An advertisement is a commercial speech and is protected and safeguarded by the Right to speech and expression(Article 19(1)(a))of the Indian constitution.
- b) An advertisement must not be false, misleading, deceptive or unfair.
- c) There would be grey areas but these need not necessarily be taken serious representation of facts but only as glorifying ones product
- d) While glorifying its product, an advertiser may not denigrate or disparage a rival product.as was added to the prolonged list in the case of *Pepsi Co. Inc. & Ors. V. Hindustan Coca cola Ltd. & Anr.*¹⁸

Furthermore the Ld. Single judge in the case of *Marico Ltd. V. Adani Wilmar Ltd.* The decision bench stated that the generic disparagement of a rival product, without specifically pin- pointing the rival product is objectionable.

Thus relying on the Marico and the Pepsi Co.¹⁹ case the learned judge stated that even in the Pepsi Co. case the court has stated that comparative advertising is permitted until unless the product of the rival is not been derogated and discredited, while comparing some amount of showing down is permissible.

Thus the court finally decided that the defendant is to the extent impliedly referring to the plaintiff's product by persuading the consumers belief and perception that the product

¹⁸ (2003) 27 PTC 305 (Del)

¹⁹ CS(OS) 246/2013, Date of decision: 18th April, 2013

must be harsh antiseptic and thereby disparaging and denigrating the plaintiffs product. Thus disparaging advertisement affected the consumers as well since the consumer belief on the product was been inflicted hence causing a loss to the rival and imparting wrong, false and deceitful notion or information to the public.

Another example is of the case of *Bhupesh Khorana vs Vishwa Buddha Parishad*²⁰ in which a class action suit was instituted by 12 students who joined the BDS course which was been offered by the Buddhist Mission Dental College and was run by Vishwa Buddha Parishad. The complaint was that the college, in its advertisement and prospectus inviting applications for the course, had projected the impression that it was affiliated by Magadh University, Bodh Gaya and is recognized by the Dental Council of India and was fully equipped and capable to give the degree of Bachelor of Dental Science. However, the scenario after enrollment and starting of the college, the students found to their dismay that the annual examinations were not being held as the college is neither affiliated to Magadh University, Bodh Gaya & nor is recognized by the Dental Council of India. As a result the students lost two precious academic years, but also spent money on fees, hostel charges, etc..

The National Commission holding the college to be deficient directed it to refund the admission expenses of all the twelve students along with interest of 12 percent

Moreover, consumers right to choice if is been violated due to the information not been revealed then the advertisement is taken to be deceptive and misleading.

For example:- Indian automobile company Maruti Udyog Ltd (MUL) has been ordered by the asked to pay ₹ 1 lakh to a customer as an amount for compensation for "inducing" the customer to buy a car by misleading advertisements on mileage. Complainant in this case had alleged that in its advertisement MUL had claimed that its car Zen had a fuel efficiency amounting to 16.7 km per litre, relying on which the

²⁰ Original Petition No. 168 of 1994,decided on 13 February, 2009

complainant purchased the Zen LX of Maruti in 2005. Holding MUL guilty of resorting to unfair trade practice, directed to conduct its fuel efficiency test and asked it to inform buyers about the minimum and the maximum possible mileage persisting of its cars in its future advertisements. ²¹

The one which tout health cures and the drugs of questionable efficacy or which violates the right to safety of the consumer is also within the ambit of misleading advertisement. This class of misleading or violative advertisement is the most dangerous one due to the reason that the consumer's health can be the one thing which could be at stake. The health of the consumer being at stake is much bigger than any of the financial losses or monetary concerns that can be accounted for. Thus the misleading in this case is a critical one and is certainly dealt in a proper manner.

For example:-

In the case of *Ajay Gautam V. Amritsar Eye Clinic & 6/6 Lasik Laser Centre, Dehradun & Ors*²² :

The National Consumer Disputes Redressal Commission (NCDRC) held that the doctors can't advertise anything that shall mislead a person to go into for a treatment based merely on the doctor's claim stating that he/she would be completely cured .

²¹ Misleading ad: Maruti Suzuki pays Rs 1L,

23rd Aug, 2012, www.indianexpress.com/news/misleading-ad-maruti-suzuki-pays-rs-11/992102

²² Complaint case No. 17/2002 , Uttaranchal State Consumer Disputes Redressal Commission, Dehradun

Types of misleading advertisement:

The different types of misleading advertisement are as under:-

- Bait & Switch Advertising
- High-Pressure Sales Tactics
- Deceptive Form Contracts
- Artificially Inflating Prices
- Failure to Disclose

Bait & switch advertising is a type of an advertising of a product not intended to sell. Bait and switch advertising is said to occur when a company offers a consumers an appealing and luring deal and then changes the deal when consumers make direct inquiries about it. Businesses are in a practice usually to lure consumers into the stores by promising the consumers to sell or provide them with an item or service at a certain cost but as soon as the consumer is in the store, the seller tries to sell the consumer a much more costly item or service and rather the deal been offered to lure the way of the consumer towards it is lost. Thus as the name suggest the bait is been set by the seller for the consumers by placing a luring and undeniable deal on the plate and thus trying to pat the switch to get the bait into the plate for a profit.

Different ways of such is by –

One of a kind:- the dealership project a low price to a product whose supply is less and further uses the same to lure the customers and furthermore when the customer paves it way to the store to buy the same the product is out of stock and thus the seller projects the other products to the customer

While supplies last:- the dealer gives a freebie on the condition till the stock last and moreover the supplies are too less in number and thus such a freebie is just to catch the eye of the customer.

Financing: it's a new way to lure the customer to buy a product of larger amount in monetary terms. Companies usually promote low financing rates as a major focus in their advertising. The promise depicted by it might be of eligibility of everyone for financing or that financing is available at an interest rate of as low as zero % but, It is important to read the fine print in these advertisements which is not been highlighted in the advertisement. Government regulates this criteria with specificity regarding the credit availability of the consumer. Thus can't be regulated by the seller.

For example: In the case of *Kirloskar Pneumatic Company Ltd. V. National Thermal Power*²³ the discussions to this Bait advertising is been made. Although no case of bait advertising was found in the same.

High-pressure sales tactics are used to get consumers into buying a service or a product that is not intended to purchase by them. This is a new method of such advertisement pressurizing the consumer to take the offer. The constant calls from the buyers influencing the same through new offers luring the consumers to take the offer. This is a major problem in India as well with a number of callers increasing day by day influencing with the false mouth luring offers to buy stuffs.

Deceptive form contracts have ambiguous promises or fine print in their contracts that are usually overlooked or misunderstood.

Artificially inflating prices is a method been used by sellers to give the illusion that a onetime opportunity deal is available on a product or service. Thus these infringe the right to choice of the consumer and thus is misleading in nature.

Failure to disclose is a method been used to mislead in which the disclosure of the terms and conditions and the availability of the product is not disclosed and thus hampering the consumers. For example: Any promotional contest or quiz that fails to disclose the number and approximate value of the prizes to be won and any important information in

²³ Bombay high court, 26 September, 1986

relation to the chances of winning then, such as the odds of winning also come within the ambit of misleading advertisements.

Other manipulations: this being the most common and the most viewed method of deception. The manipulation of measurement units and standards despite of the specific law against it is a great blow to the legal structure. This includes the fact that it is the common experience that fillers and over-sized packaging used both in the advertisement or the product are also a method of deceiving the consumers. There are also untruthful manipulations of terms both in food and cosmetics for example herbal, organic food, light food etc.²⁴

In the case of *Bajaj Auto Ltd & Anr V. Pankaj Kumar*²⁵ the state commission judged that the motor company exaggerated the advertisement regarding the moto vehicles fuel efficiency and thus was unfair trade practice as it was alluring in nature.²⁶

Comparative advertisement:

The origin of comparative advertising connects back to the beginning of the commerce itself. It's been normal for a seller to try to enjoy monetary benefits by drawing a comparison between the qualities of his products/services with that of its competitor's.

Comparative advertising was earlier restricted to "puffery" in which a trader list the facts about the product, or even makes claims which can't be proved or disproved and are vague. Further some traders, in the disguise of comparative advertising, have started "disparaging" the competitors' goods, forcing the law to intervene. Thus, Puffery and disparagement are considered to be the 2 fundamental facets of the comparative advertising.

²⁴ George Cheriyan (Team head) Deepak Saxena & Amarjeet Singh, *Consumer Unity & Trust Society* ,12, http://cutsinternational.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf

²⁵ (2006) CPJ 267 (NC)

²⁶ Justice DP Wadhwa, the law of Consumer Protection,2009,p1162, vol I (2nd Edition)

In India, the law on comparative advertising has developed through judicial precedent. During the late 1990s, courts took the view that while “puffing” is permissible, any statement or image that further demeans or disparages the competitor’s product is not permissible. This view was consistently upheld by courts in many cases.

In all cases the guiding principle for the courts has been that “The law is that any trader is entitled to puff his own goods even though such puff as a matter of pure logic involves the denigration of his rival’s goods. Notices reading ‘the best tailor in the world’, ‘the best tailor in this town’ and the ‘best tailor in this street’ do not commit an actionable offence. When, however, the trader is not puffing his own goods but turns to denigrate the goods of his rival then the situation is not so clear-cut.”²⁷

“The statement ‘my goods are better than X’s’ is only a more dramatic presentation of what is implicit in the statement ‘my goods are the best in the world’ and would not be actionable. However, the statement ‘my goods are better than X’s because X’s are absolute rubbish’ would be actionable.”

The examples of the cases relates to instances where the rival’s product was clearly identifiable, but when the things get complicated such as when the competitors have found an innovative way to pursue comparative advertising, by condemning a whole class of products instead of a specific competing product, thus, thereby creating a new species of comparative advertising known as “the generic disparagement”.

In this form of comparative advertising a competitor doesn’t merely disparages a specific product but also indulges in disparagement of a complete section or class of products.

The earliest case to be reported of generic advertisement was that of *Dabur India Ltd. V. Emami Ltd.*²⁸

²⁷ Sudeep Chatterjee and Archana Sahadeva, *Comparative advertising: An over view*, 1st sep, 2013

<http://www.worldipreview.com/article/comparative-advertising-an-overview>

²⁸ 2004(29) PTC 1 (Del)

Here in this case the plaintiff is a leading manufacturer of pharmaceutical products, toiletries, ayurvedic and other medicinal preparations under the trademark of “DABUR” the plaintiff also markets the dabur chawanprash and own 63% of the market of it through India.

The defendant also is in the same business been the rival of it and has the products under the trademark “HIMANI SONA CHANDI AMRITPRASH”. The plaintiff claim of been disparaged by the advertisement

Plaintiff came across the T.V. advertisement of the Himani Sona Chandi chawanprash whereby the defendant seeks to disparage the product of the plaintiff Dabur chawanprash.

Aforesaid advertisement in the commercial shown was termed to be a negative campaigning of the product of the plaintiff and the there was an effort on the part of the defendant of insinuating the product of plaintiff.

The court stated that even if there lacks any direct reference to the product of the plaintiff and a reference to the whole class of chawanprash in the generic sense has been made , the generic disparagement is possible. The disparagement was made on the behalf of the whole genre of chawanprash been not feasible during the months of summer thus, the Dabur chawanprash also belongs to the same genre and thus is been disparaged.²⁹

In the considered opinion of justice of the case, the defendant is proposing in the advertisement made that there shall not be any consumption of the chawanprash during summer and thus is inflicting the business of the plaintiff. Such an advertisement is clearly disparaging the product of the plaintiff as there is innuendo present in the said advertisement.³⁰

Thus the award was passed allowing the restraining of the impugned misleading advertisement from been broadcasted.

²⁹ Ibid, para7

³⁰ Ibid, para9

Further, In the case of *Pepsi Co. Inc. & Ors V. Hindustan Coca cola Ltd. & Anr.*³¹ The ingredients to be present for disparagement was stated. It was stated that for deciding on disparagement the following shall be present:-

1. Intent of commercial
2. Manner of the commercial
3. Story line of the commercial and the message sought to be conveyed by the commercial.

Out of the above three the manner of commercial is the most important and the deciding element. If the manner is ridiculing the competitor then such is within the ambit of disparagement.³²

Moreover in this case the court stated that there is no doubt that comparison is permissible so long it doesn't undervalue the competitor.³³

Further the court in the case of *Colgate Palmolive Co. & Anr. V. Hindustan Unilever Limited* ³⁴ stated that-

The law relating to disparaging advertisements is now well settled.

While, it is legal for a person to exaggerate the claims related to his goods and indulge in puffery, but the same is not open for a person to disparage or denigrate the goods of another person. In comparative advertisement, a certain amount of disparagement is implicit however if a person compares the goods and claims that the same are better than that of its competitors, it is implicit that the goods of his competitor's are inferior in

³¹ 2003 (27) PTC 305 Del

³² Ibid, para 13

³³ Ibid, para 21

³⁴ FAO (OS) 396/2013 & CM No. 13486/2013

comparison. To this limited extent, puffery in the context of comparative advertisement does involve showing the competitor's goods in a bad light. There is no claim been arising till there exists only puffing and nothing in excess than it.³⁵

Conclusion

Thus the lack of law can be easily be identified but still the failure of the legislature is tried to be negated by the attempt of judiciary in a plethora of cases setting the precedence and setting the guidelines when it comes to misleading advertisements. The generosity of the judiciary to present a clear picture in many aspect of law where there it lacks a law is quite grandiloquent.

Similarly in the recent case of *Dabur India Ltd. V. Colortek Meghalaya Pvt Ltd*³⁶ the court settled the dispute on comparative advertising. It stated that –

1. A seller is entitled to declare its goods to be the best in the world, even the declaration is untrue.
2. He can further also state that his goods are better than his competitors even if its untrue.
3. He can compare the advantages and dis advantages for the purpose of comparative advertisement.
4. The seller cannot while saying that his goods better than his competitors, say that his competitors goods are bad and if he does so shall amount to defamation.³⁷

³⁵ Ibid, Para 27

³⁶ 167 (2010)DLT 278(DB)

³⁷ Ibid,Para 23

CHAPTER III - MISLEADING ADVERTISEMENT AND LAWS IN INDIA

Introduction

The problem of witness advertisement continues to be serious in the country despite several legislations like food safety and standards Act, consumer protection Act and Drugs and cosmetics Act. Some business houses thrive in misleading people in order to sell their product.³⁸

There are a number of legislations that have been enacted so as to control the problem persisting in the market to the consumers due to the misleading advertisement been communicated to gain profits by the sellers.

These laws are although restricted to the particular area of concern of the act.eg.

The drugs and magic remedies act been enacted having provisions restraining the publication of the certain de=rugs leading to the miscarriage in women. The area of restriction is to the drugs only and further it doesn't controls the whole of the advertisement related to different areas. Thus there lacks a particular legislation or the governmental authority in the strict sense, inspite of the ASCI which can regulate this area.

³⁸ Prof. Madabhushi Sridhar, *Misleading Ads and absence of law*, Feb 2015 , *Lex witness*

LEGISLATION IN INDIA

Indian statutory laws governing the specific media, specific populations, and specific goods and services. The most significant of these laws are:

Laws Governing Media

- The Press Council Act, 1978
- Cable Television Network Rules, 1994
- Electronic Media Monitoring Centre (EMMC)
- Code for Commercial Advertising on Doordarshan and AIR
- Code of Conduct of the News Broadcasters Association
- Norms for Journalist Conduct issued by the Press Council of India

Laws Protecting Society and the Consumer

- Consumer Protection Act, 1986
- Emblems and Names (Prevention of Improper Use) Act, 1950
- Companies Act, 2013
- Young Persons (Harmful Publications) Act, 1956
- Indecent Representation of Women (Prohibition) Act, 1986
- Standards of Weight & Measures Act, 1976
- Laws related to intellectual property rights (IPR)

Industry-Specific Laws

- The Drugs and Cosmetic Act, 1940
- The Drugs and Magical Remedies (Objectionable Advertisements) Act, 1954
- The Transplantation of Human Organs Act, 1994
- The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
- Advocates Act, 1961
- Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992
- Securities and Exchange Board of India Act, 1992
- Public Gambling Act, 1867, the Lotteries (Regulation) Act, 1998 and the Prize Competitions Act, 1955
- The Prize Chits and Money Circulation Schemes (Banning) Act, 1978
- The Food Safety & Standards Act, 2006
- Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003
- Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002

Drugs and magic remedies Act, 1954

This is an Act to control the advertisement of drugs in certain cases and this prohibits the advertisement for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith. This Act extends to the whole of India with the exception of the states of Jammu and Kashmir. Whenever any medicine is prescribed the Act superficially states under Section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916) or specified in the Schedules to the Indian Medical Council Act, 1956 (102 of 1956); that only those registered as a medical practitioners under any law for the time being in force in any State can only prescribe any medicine.³⁹ The Act also prohibits any medical practitioner to be involved in advertising for any medical product whether in print or through the audio-visual medium prohibition of misleading advertisements relating to drugs.

As per section 3 of the Act: no person shall take any part in the publication of any advertisement referring to drug in terms which suggest or are calculated to lead to the use of that drug for- procurement of miscarriage in women or prevention of conception in women, maintenance or improvement of capacity of human beings for sexual pleasure, correction of menstrual disorder in women, diagnosis, cure, mitigation, treatment or prevention of any disease or disorder or condition specified in the schedule, or any disease or disorder or condition which may be specified under rules. (Amended in 1963).

Provided no such rule shall be made except-

- (i) in respect of any disease, disorder or condition which requires timely treatment in consultation with a registered medical practitioner or for which there are normally no accepted remedies and,
- (ii) After consultation with Drugs Technical Advisory Board or experts in Unani, Ayurveda.

³⁹ George Cheriyan (Team head) Deepak Saxena & Amarjeet Singh, *Consumer Unity & Trust Society*, 23, http://cutsinternational.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf

Section 4 of the act states that-

NO person shall take any part in any advertisement relating to the drug containing matter which

- a) directly or indirectly gives a false expression regarding the true character of drug or ,
- b) Makes any false claim for the drug, or
- c) Is otherwise false or misleading in any material particular.

Section 5 of the act states that:-

NO person carrying on the profession of administering magic remedies shall take part in any publication of advertisement referring to any magic remedy which directly or indirectly claims to be efficacious for any of the purposes specified in section 3

Section 6 of the act prohibits imports or export of such material. And section imposes penalty for first conviction: imprisonment for 6 months or with fine or with both and for subsequent conviction, imprisonment which may extend to one year or with fine or with both.

This law is however considered to be an outmoded law. While it prohibits misleading health claims in the print media: it lacks any provision to tackle the advertisement that may appear on the television or the internet. No law specifically to prosecute those who make false spiritual claims and deceive people.

Only 630 cases are registered in 2 years indicating the widespread violation. 69 prosecutions were launched in the year 2010-2011 and 2011-2012 under the DMR act.⁴⁰

And 57 food items identified with misleading claims through print and electronic media, notices to the manufacturers were issued. Maharashtra food and drugs Administration (FDA) seized medical products worth Rs. 113 crore last year. It is obvious that for this country of 127 crore people, where hundreds of channels are streaming several misleading advertisements, this is nothing. But still the growth in such cases can be

⁴⁰ Prof. Madabhushi Sridhar, *Misleading Ads and absence of law*, Feb 2015 , *Lex witness*

admittedly seen and moreover can be a great problem in near future unless and until is been controlled.

Nirmal baba case

On May 16, 2012, The Delhi High Court issued notice to the central & Delhi governments on the plea received seeking action against the self-styled Nirmal Baba who advertises of the power of magic treatment to patients. The petitioner alleged that Nirmal Baba had been advertising in numerous electronic and print media claiming to have magical treatment as he is a representative of god.

The petitioner sought a ban on all advertisements communicated through all media by the Nirmal baba, as the same is in violation of the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.⁴¹

The court stated that, the common man is being duped, misled by the self-styled Baba under the belief that the descendant or representative of god will solve the problems of the people through its magical blessings.

Magical remedies for curing diseases has proven to be life threatening and have even costs many lives of people. They have been sold an idea of being “No Risk” remedies but in reality it involves risks and safety and are thus prohibited by law.

Drugs And Cosmetics Act,1940

⁴¹ George Cheriyan (Team head) Deepak Saxena & Amarjeet Singh, *Consumer Unity & Trust Society* ,35, http://cutsinternational.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf

This law regulates the production, manufacture and the sale of all drugs and cosmetics in the country.⁴² The Act further prescribes a fine of up to Rs 500 for any person using any report or extract of report of a test or analysis made by the Central Drugs Laboratory or a government analyst for advertisement of a drug or cosmetic⁴³.

Section 29 of the act , penalty for use of government Analyst`s report for Advertising : whoever uses any report of a test or analysis made by the central drugs laboratory or by a government Analyst , or any extract from such report, for the purpose of advertising any drug shall be punishable with fine which may extend to 500 rupees.

Misbranded drugs – for the purpose of this chapter a drug shall be deemed to be misbranded:

- a) If it is so colored, coated powdered or polished that damage is concealed or if it is made to appear of better or greater therapeutic value than it really is: or
- b) If it is not labelled in the prescribed manner : or
- c) If its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular.⁴⁴

As per Section 17 C misbranded cosmetics- for the purpose of this chapter, a cosmetic shall be deemed to be misbranded if-

- a) If it contains color which is not prescribed
- b) If it is not labelled in the prescribed manner or:
- c) The label or any container or anything accompanying the cosmetic bears any statement which is false or misleading in any particular.

⁴² George Cheriyan (Team head) Deepak Saxena & Amarjeet Singh, *Consumer Unity & Trust Society* ,36, http://cutsinternational.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf

⁴³ Ibid26

⁴⁴ Section 9 , drugs and cosmetics act,1940

The food safety and standards Act of 2006

It came into force in 2011, Aug. 5th making it at par with the international standards .it shall ensure improved quality of food for the consumers and censure misleading claims and advertisement by those in food business.

Misbranded food: As per section 2(zf) misbranded food means an article of food which is Purported or is represented to be or is being-

- i. Offered or promoted for sale with false, misleading or deceptive claims either:
 - a) Upon the label of the package
 - b) Through advertisement

Penalty for the same is been given under the section 52 of the act stating-

Any person whether by himself or by any other person manufactures, sale or stores or distributes any article of food for human consumption which is misbranded , shall be liable to penalty extending up to 3 lakhs.

Moreover as per section 52(2) the adjudicating officer may issue a direction to the guilty for taking corrective action to rectify the mistake or such article of food to be destroyed.

Further in this act the power of prohibiting unfair trade practices has been stated in section 24 of the act. It states as follows:

Restrictions on the advertisement and prohibition as to unfair trade practices-

- 1) None of the advertisement shall be made of any food which is misleading, deceiving or contravening in nature with the provisions of the act.
- 2) No person shall engage in any unfair trade practice for purposes of promoting sale, supply, use and consumption of articles of food or adopt any unfair or deceptive means including practice of making any statement whether orally or in writing or by visible representation.

No false representation

- Falsely representing that the food are of particular standard, quality ,quantity or grade composition:
- Makes a false or misleading representation concerning the needs for or the usefulness:
- Gives to the public any guarantee of the efficacy that is not based on an adequate or scientific justification thereof,
- Provided that where a defense is raised to the effect that such guarantee shall lie on the person raising such defense.

Offenses under the FSSA are- food safety officer shall be liable to a penalty which may extend to one lakh rupee if found guilty of an offence under section 39. In case a false complaint is been made the fine shall be 50 thousand rupees which may extend to 1 lakh.

Penalty for the misleading advertisement is also been defined in section 53 of the act as

Any person who publishes or is a party to the publication of the advertisement, which –

- 1) Falsely describes the food:
- 2) Is likely to mislead as to the nature or substance or quality of any food or gives false guarantee

Shall be held liable for a penalty which may extend to ten lakh rupees.

At present misleading advertisement are treated as unfair business practice. It requires a sharper definition in consumer protection Act.

*M.R. Ramesh V. M/s Prakash moped house and Ors.*⁴⁵

The apex court warned against advertisement that use fine print to hide crucial information pertaining to products and services, thereby misleading the consumer.

⁴⁵ RP No 831 of 2001

If a free gift is promised, it should really be so. If the manufacturer is covering either fully or partially the cost of free gift, it becomes a false or misleading claim, coming under the definition of the unfair trade practice.

Consumer protection Act,1986

The Constitution of India, has 2 very important and fundamental parts. They are Part III and Part IV of the Indian constitution. Part III dealing with Fundamental Rights and Part IV dealing with the Directive Principles of State Policy (DPSP). These two denotes the two most important features present in our constitution.

The former denotes the existing enforceable legal rights while on the other hand the latter talks of the targeted socioeconomic goals which our founding fathers desired to be implemented in the free India and wanted the successive governments to achieve it. In pursuance of achieving one of the goals, Consumer Protection Act (COPRA) came into force in 1986.

As per the preamble of the Act, it was enacted to provide for the better protection of the interests of consumers and for settlement of consumers disputes. The thinking of the legislators for the better social safety to the consumers the act was enacted.

In spite of the other remedies available in other laws like Indian Contract Act,1872, Sales of Goods Act, IPC, Torts and procedure prescribed in Cr.P.C. and C.P.C. the purpose of the enactment of COPRA, 1986 was to spread specialized dispute redressal mechanism and proper authority to do the same. COPRA 1986 protects the interests of the consumers of India.

The three tier quasi-judicial mechanism as per the act - at the district, state and national level is the backbone of COPRA for providing the simple, speedy and inexpensive

redressal of the disputes.⁴⁶ The COPRA has the strong provisions to deal with misleading advertisements. As per provision of the act the Central Government has established the Central Consumer Protection Council, while the State government established the State Consumer Protection Councils and also the District forums in their respective states.

A complaint may be made by the consumer or, the government or, by a recognized consumer society or even by one or more consumers that have a common interest, within a time period of two years of the grievance arising. A few instances when such a complaint may be made includes losses caused to a consumer as a result of the unfair trade practice or, defects in goods purchased or, deficiency in any services or, charging in excess of the price being displayed etc. After the complaint been received the other party will be asked to submit their version about the case. Testing through labs are also done at this stage since in case of deceptive goods. If it relates to any service matter then both the parties shall be asked for evidence to be submitted in support of their claims. If the authority gets convinced of the complaint being valid then it may order producer to further remove the defective product or, replace the goods or even return the price paid by the consumer, or pay any amount to the consumer as compensation for the losses or the injury been suffered.⁴⁷

An appeal lies against such orders to the appellate authority. In case of non-compliance with the order made fine may be imposed or even be charged with imprisonment. On the contrary if the complaint is frivolous or malicious, in such a case the complainant may be fined heavily.

One of the major developments in Consumer protection act has been with respect to whether the services rendered by the medical professional, especially when it is a free service or as in the case of government hospitals can fall under this Act. It had been

⁴⁶ George Cheriyan (Team head) Deepak Saxena & Amarjeet Singh, *Consumer Unity & Trust Society* ,20, http://cutsinternational.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf

⁴⁷ Ibid at pg 35

argued that technically such professions do not provide any contracts 'for services'. The courts however keeping in mind the fact behind the implementation of the Act which was to protect the consumers have substantially held that all the professional services whether imparted for free or are paid for would render a person to be a consumer and is within the purview of the Act. The procedures under this Act and also the Commissions are relatively quiet simpler and informal than what is under the normal litigation. In fact even the consumer by itself can represent in front of the commission in spite of hiring a lawyer to argue one's case. Despite the change and flexibility provided and the simple procedures still there have not been enough consumer cases as was the moto in regard to protection of the consumers in India unlike what happens in the US, where the courts are usually filled with such cases related to the consumer grievances.

One of the reasons of this fact has been - lack of consumer awareness, the consumers are unaware of their rights in India and moreover seemingly intimidating structure of the courts in India and the complexities of the legal profession. However, in spite of barriers and bumps throughout the road, COPRA still remains one of those rare and important laws which allows for a speedy, simple and effective protection of the rights of ordinary people, and the judicious use of the same would further foster a great consumer movement throughout India.

The Consumer protection act, 1986, applies to advertisements for all products in the market place. As per section 2(r) the consumer has the power to file a complaint related to false and misleading advertisements which are under the purview of unfair trade practice. The law refers the 7 classes of unfair trade practices present in the 6 subsections of this section of law.

Under Section 14 of the act, the consumer courts can take following actions

- Issue interim orders stopping such advertisements pending disposal
- To pass cease and desist orders.
- Award compensation for loss or suffering, punitive damages and cost of litigation to the affected party.

- Direct the advertiser to issue corrective advertisement

The Specific Provisions dealing with the misleading advertisements of the consumer protection act are:-

Section 2 (r) of the Consumer protection act which gives a comprehensive and elaborate definition of Unfair Trade Practices (UTPs) and

As per the section 14 which deals with the directions to deal with such unfair trade practices issued by the court.

The consumer forum can also issue an interim orders for stopping such advertisements till pending disposal of such a case. Moreover can give directions to advertiser in order to discontinue communicating or publishing such advertisements and not to repeat the same and even can award compensation for the loss and injury caused on account of such misleading advertising. Punitive damages and costs of litigation can also be issued by the forum or courts for the harassment caused to the consumer. Last but not the least, the forum can even direct the advertiser to issue any corrective advertisement in order to neutralize the effect of misleading advertisement at the cost of the other party and make the loss good of the consumer as it is responsible for issuing such misleading advertisement.

The Remedies that the forums/commissions can order for relief are:

- Removal of the defects from goods in dispute
- Replacement of the goods
- Refund of the price being paid
- Award of compensation for any loss or injury suffered.
- Removal of the defects or deficiencies in services.
- Discontinuance of Unfair trade practices/restrictive trade practices and further direction of not repeating them
- Withdrawal of the hazardous foods from sale

- Award for an adequate costs and litigation cost.

However there subsist limitation in the consumer protection act as follows:

1. The consumer forum can adjudicate over complaints filed before them and can't take any suo moto action. Unless the complaint is been filed the forum is handicapped to take the case. Thus suo moto case of any misleading advertisement can't be taken by the forum on it own.
2. The power of investigation that was present earlier in the MRTP commission is not present in the consumer forum. They neither have the power nor the infrastructure to carry the investigation like the one present with MRTP Commission.
3. Sometime due to the lack of investigative unit, Inordinate delays can be seen in pronouncing of the final verdict

Cases-

*IN proctor & gamble products v. Raj deo Bhardawaj*⁴⁸

The complainant purchased Aeriala soaker detergent and got an aerial bar weighing 125 gms. The whole weight of the product was 1kg 75gms instead of 1kg 125 gms. thus due to the under weight was considered to be unfair trade practice. And compensation of ₹. 2000 was granted.⁴⁹

Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

⁴⁸ 1997 III CPJ 251

⁴⁹ R.N.P. Chaudhary, Commentary on the consumer protection act,1986, provisions and procedures

This is an act to prohibit the advertisement of, and to provide for the regulation of production, supply and distribution of, cigarettes and other tobacco products and for the matters that are incidental thereto.

As smoking is termed to be injurious to health and causes cancer is a known fact and is universally accepted. A Resolution was passed by the 39th World Health Assembly (WHO) on May 15, 1986 which urged the signatories of WHO, who have not taken necessary measures to ensure that there is an effective protection given to non-smokers shall legislate to protect children and young people from being addicted to tobacco. The 43rd World Health Assembly in its Fourteenth Plenary meeting reiterated the same. World Health Assembly urged signatories to consider in their tobacco control and plan for legislation and other effective measures for their protection especially to the risk groups such as pregnant women, children. There shall be a stoppage to involuntary exposure to tobacco smoke and shall discourage the use of tobacco and shall impose progressive restrictions and take further strict actions to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco. In order to prohibit the consumption of cigarettes and other tobacco products which are injurious to health with a view to achieving improvement of public health in general as enjoined by Article 47 of the Constitution.⁵⁰

In order to prohibit the communication of such an advertisement and to provide for regulation of production, supply and distribution of cigarettes and other tobacco products and for matters incidental thereto this act is enacted by the Parliament.

According to it, no person is allowed to smoke in any public place. The public places are taken to be a smoking restricted area and further is punishable in case of any violation of the same.

Furthermore the selling of tobacco within the area of school or college or any educational institutional premises is highly restricted however, in practice the vendor by paying the

⁵⁰ George Cheriyan (Team head) Deepak Saxena & Amarjeet Singh, *Consumer Unity & Trust Society*, 24, http://cutsinternational.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf

fine for the offence gets relief and again carry on with the business and repeat the same process the next day.

Even there are provisions as per the Code of Criminal Procedure, 1973, for the seizure and search of tobacco that is being sold. However, in practice the vendor by paying the fine for the offence gets relief required and the seized packages are also returned with some conditions. Thus the strictness required is totally lacking.

Cable Television Networks (Regulation) Act, 1995

The act lays down the blueprint or the procedure for registration of a cable television network and further regulates the programmes and advertisements transmitted on cable network in India. The registering authority under the act is the Head Post Master of the Head Post Office of an area. The cable operator's office is within the territorial jurisdiction of the said Head post office.

Indian penal code,1860

The section 292 and 293 of the Indian Penal Code, 1860 prohibits the dissemination of any of the obscene matter. Moreover the other laws having the same provisions are –

- *The Customs Act, 1962*, allows the detention, search and seizure of any of the obscene matter sought to be imported into the country.
- *The Indian Post Office Act, 1898*,also imposes a similar prohibition on the transmission of obscene matter through the post.

The Children's Act, 1960

This act prohibits any disclosure of names and credentials of any child involved in any proceedings in any of the circumstances.

The Indecent Representation of Women (Prohibition) Act, 1986

This act prohibits and forbids any of the depiction that has been made of targeted to any women in any indecent or derogatory manner in the mass media. No person shall publish or even cause to be published, or take part in the publication or exhibition of, any of such advertisement which contains any indecent depiction or representation of women in any of the form.

The Emblems and Names (Prevention of Improper Use) Act, 1950

This act prohibits the use by any private party of certain names, emblems, etc.

Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002,

Under the *Indian Medical Council Act, 1956*, physicians or medical practitioners are not allowed to advertise their services. They are prohibited from advertising in any of the form or manner or through any mode, even if they are soliciting of patients directly or indirectly, by a physician, or by a group of physicians, or even by the institutions or organizations is termed to be unethical.⁵¹ However, making of a formal publication in press regarding the general information as discussed below is allowed.

The information to be allowed for the purpose of publishing and which is considered to be non violative of the section are-

- Date of starting of the practice
- Date of the change in the type of practice
- Information on any changing address
- Information on temporary absence from the duty
- On resumption of another practice
- Public declaration of any charges
- And On succeeding to any another practice

⁵¹ Hemant Goyal & Jitender Jain, *India: Advertising Law In India - Part 1*, Global jurix advocates & solicitors, Last Updated: 17 August 2012

Bar Council of India Rules

The rules of the Bar council of India (BCI) that is been formulated under the *Advocates Act 1961* , strictly and explicitly prohibits advertising and any kind of publicity as per the rules governing law firms' website. These rules are enacted and enforced to safeguard the clients from exploitation. Such a restriction helps to curb the false advertisement of lawyers to gain publicity to attract clients.

Arms Act, 1959.

The Sale and purchase of any of such items is permitted on a license been given to the seller by the government authorities. Thus in case of absence of license it's a sheer violation of the law. Moreover even the advertisements been done related to such products are not permissible in India.

Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992

This act prohibits the advertisement of any infant milk substitutes or even of the feeding bottles.

Public Gambling Act

The Indian constitution provides a federal structure and explicitly gives the States the right to legislate on the area related to "gambling and betting" being a matter of state list. The act prohibits gambling activities in India. However, it certainly permits games of some mere skills.

The *Information Technology Act, 2000* was also amended to ban Internet gambling and online betting websites.

Lotteries (Regulation) Act, 1998 vests power to the State government to hold lotteries subject to prescribed conditions.

Under *section 294-A* of the *Indian Penal Code, 1860* advertisements of a lottery unless its as per the provisions of the Lotteries (Regulations) Act shall be punishable.

REGULATORY AUTHORITY

Advertising standards council of India.

In India, there exist only one body for the Self-Regulation in the area of Advertising – the ASCI, which is being concerned with safeguarding of the interests of the consumers by monitoring, guiding, regulating the commercial communications of Practitioners in Advertising on behalf of the advertisers, for advertisements carried by different modes of Media, in their endeavors to influence the buying decisions of the consumers.

ASCI is a voluntary self-regulatory council which came into existence in 1985 to regulate advertising and to enhance the public confidence subsisting in advertisements. The objectives of the council is to:

- To ensure the truthfulness and honesty of claims and representations made by advertisements been published.
- To ensure that advertisements are not offensive to any of the generally accepted norms and standards of public decency.

- To safeguard against any indiscriminate use of advertising been done for the promotion of products regarded as hazardous or detrimental to society as a whole or to individuals.
- To ensure that advertisements observe fairness in competition or is not anti competitive in nature, so as to inform the consumer on choices in the marketplace while observing the canons of generally accepted competitive behavior in business
- To monitor, administer, regulate and promote the standards of advertising practices
- To codify, adopt and further modify the code of practices as per the requirement in India and further to emphasize the implementation, administration and promotion and publication of the code.
- To provide the facilities and machinery in form of one or more CCC having such composition as required having powers as may be prescribed from time to time to examine complaints against advertisements in terms of the Code of Advertising practices and further report thereon.
- To widely publicize the Code and further seek adherence to it and convict those engaged in misleading advertising.
- To print, publish the pamphlets, circulars or other materials that may be considered desirable for the promotion of the objects of the Company and disseminate it through any medium of communication.

Acting with the objective of ensuring that all advertising be legal, as well decent, honest and most importantly truthful along with the sense of socioeconomic responsibility persisting towards the consumer and to provide fair competition.

The sponsors of the ASCI, who are its principal members, are firms of considerable repute within the industries in India, which comprise of advertisers, media, and advertising agencies and other professional or ancillary services connected with

advertising practice. The ASCI is not a Government body, nor does it formulate rules for the public or for the relevant industries.

ASCI has adopted a Code for the Self-Regulation in Advertising. Its basically a commitment to honest advertising and to retain the fair competition in the market-place. It stands as a barrier and protector of the consumers and all concerned thereto such as advertisers, media, advertising agencies & others. With the increasing popularity and effectiveness of the self regulation , and the recognition of it by the fraternity, three things will the ASCI aims for is-

- i. Fewer false, deceptive, misleading claims
- ii. Fewer unfair misleading advertisements
- iii. Increasing respectability

ASCI consists of board of governors, consumer complaints council (CCC) and the secretariat. The board of governors consists of 12 members⁵² with 4 members from the sectors of Advertisers, advertising agencies, media and other related professionals, while consumer complaints council has 21memebers⁵³ with 9 members from the industry and the rest 12 from the civil society like lawyers, journalists, academicians. The secretariat constitutes of 5 members with the secretary general.

In case of a deceptive advertisement the person can complain the same in writing to ASCI. The complaint been filed will be taken into consideration by the CCC after providing the due process to the advertiser to present a defence to the following and after witnessing whether the advertisement is in consonance or in contrary to the rules of ASCI and the law of the land the complaint is upheld or rejected and further the advertisement is further withdrawn or modified as per the scenario subsisting.

⁵² "ASCI / Board of Governors", Ascionline.org. 2011-02-01. Retrieved 2014-02-12

⁵³ "ASCI / CCC Members", Ascionline.org. 2010-10-15. Retrieved 2014-02-12

All these complaints are been evaluated by an independent body Consumer Complaints Council (CCC) whose decision is final.

Consumer Complaints Council:

The Board of Governors (BOG) shall appoint the Consumer Complaints Council, the number of members of which shall not exceed twenty one. Out of these 21 members, 12 are from civil society and nine from advertising practitioners. The CCC decides upon the complaints in a time span of 4 to 6 weeks.

The Consumer Complaints Council shall examine and further investigate the complaints received from consumers, the general public, and the members of the Company, regarding any breach of the Code of Conduct and/or advertising ethics and recommend the action to be taken in this regard. Further the Consumer Complaints council has the power:-

1. To receive complaints from the Board of Governors, Consumers, general public and members of the Company.
2. To enquire, investigate and decide on the complaints received within the framework of the Code of Conduct adopted by the Company.
3. All the decisions of CCC shall be by a simple majority, in writing and further may specify the action to be taken with respect of the offending advertisement.

ASCI propagates its Code and also a sense of responsibility for its observance amongst advertisers, advertising agencies etc.

ASCI encourages the public to COMPLAIN against advertisements with which they may be unhappy for any reason and ensures that each complaint receives a prompt and

objective consideration by an impartial committee Consumer Complaints Council (CCC) which takes into account the view point of the advertiser, and an appropriate decision is communicated to all concerned. ASCI endeavours to achieve compliance with its decisions through reasoned persuasion and the power of public opinion.⁵⁴

The Role and Functioning of ASCI and Consumer Complaints Council (CCC) is to deal with complaints received from consumers and industry, against advertisements which are alleged to be false, misleading, indecent, illegal, leading an unfair competition, and consequently in contravention of the ASCI code for self-regulation in advertising.

If an advertisement is reviewed for its impact and consonance with the rules and also with regard to the sensibilities of individual viewers, or readers of press publications, it is required to convey to the advertiser concerned, the substantial issues raised in the complaint, in the exact context of the specific ad, as conveyed by the perception of the complainant, and to elicit the appropriate response by way of comments from the advertiser.

Only then will the CCC of the ASCI, be in a position to deliberate meaningfully on the issues involved, and to arrive at a fair and objective conclusion, which would stand the scrutiny of all concerned with the right to freedom of expression, and the freedom of consumers to choose the products /services made available to them in the marketplace.

For this it is required to have a clearly readable copy or clipping of the ad under complaint, with full particulars of name and date of publication, or a printout of an ad or

⁵⁴ Smriti Chand, *Advertising Standards Council of India (ASCI): Objectives and Mission*,

<http://www.yourarticlelibrary.com/advertising/advertising-standards-council-of-india-asci-objectives-and-mission/22490/>

promotion on a website or in case of a T.V. Commercial (TVC), the channel, date and time or programme of airing, and a description of the contents of the TVC, along with a hard copy of the complete complaint preferably signed by the complainant.

The ASCI receives and processes complaints against ads, from a cross section of consumers, the general public and Industry, in the interests of all those who rely on advertising as a commercial communication, and this covers individuals, practitioners in advertising, advertiser firms, media, ad agencies, and ancillary services connected with advertising. As a policy ASCI does not disclose the identity of the complainant to the advertiser.

In the case of complaints which were upheld by the CCC during the past year, over 80% of such ads have been withdrawn or modified appropriately by the advertisers or ad agencies involved, and the concerned media have also confirmed that they would not carry such offending ads/TVC.

ASCI's Mission:

ASCI has one overarching goal- to maintain and enhance the public's confidence in advertising. ASCI seeks to ensure that advertisements conform to its Code for Self-Regulation which requires advertisements to be:

- i. Truthful and fair to consumers and competitors.
- ii. Within the bounds of generally accepted standards of public decency and propriety.

iii. Not used indiscriminately for the promotion of products, hazardous or harmful to society or to individuals particularly minors, to a degree unacceptable to society at large.

The Advertising Standards Council of India (ASCI) got to be all the more capable after a late Government notice in The Newspaper of India: Remarkable {Part II – sec. 3(i)}, on 2 August 2006 by which television advertisements must maintain the Publicizing Principles Chamber of India (ASCI) code. The revision made in Digital TV 'Systems (Change) Manages, 2006 now expresses that "(9) No notice which disregards the Code for Regulation toward oneself in Promoting, as embraced by the Advertising Standards Council of India (ASCI), Mumbai for open show in India, every now and then, should be conveyed in the link administration". Since late measurements recommend that in upwards of 85 every penny of the dissensions were maintained against television ad. ASCI has now looked for the backing of the affiliations concerned, for example, Indian Television Establishment (IBF) to induce Stations to hold fast to ASCI's code and in addition execute the choices of its CCC in this respect. Huge numbers of the promoters/diverts have affirmed In keeping in touch with have forthwith consented to the choices of CCC, either by withdrawing or adjusting fittingly the subject advertisement

To regulate the advertisement in India, ASCI has adopted a **Code for Self-Regulation in Advertising** "ASCI Code", which applies to all involved in the creation, regulation, commissioning or placement, or publishing of the advertisements. ASCI Code applies to all the advertisements been read, heard, or viewed in India even if they originate or are published abroad so long as they are been directed to the consumers of India . it being a non-statutory body, the ASCI Code is recognized under the various Indian laws in addition with being adopted by the advertising bodies. Moreover, the ASCI Code checks that the advertisement is not in contradiction with any of the laws, the ASCI rules, or the machinery through which they are been enforced.

The different rules present in the ASCI CODE to guide or to further check on the restriction on the advertisements are:-

Advertisements that are been addressed to the minors shall not contain anything, whether in illustration or otherwise, that shall result into their physical, mental, or moral harm and also if it exploits their vulnerability. Advertisements shall not:

- Encourage minors to enter odd places or to converse with outsiders with an end goal to gather coupons, wrappers, marks or the like
- Feature unsafe or risky acts which are liable to urge minors to copy such acts in a way which could result in mischief or harm
- Show minors utilizing or playing with matches or any inflammable or touchy substance; or playing with or utilizing sharp blades, weapons, or mechanical or electrical machines, the rushed utilization of which could prompt their anguish cuts, blazes, stuns, or other harm
- Feature minors in advancing tobacco or liquor based items
- Feature identities from the field of games, music, or silver screen for items which, by law, either oblige a wellbeing cautioning in their promoting or can't be obtained

ASCI code (which is made part of the Cable Television Network Rules, 1994) permits the advertisement containing the comparisons including those in which a competitor is named in the interests of vigorous competition and also public enlightenment, provided⁵⁵:

- It is clear what aspects of the advertiser's product are being compared with what aspects of the competitor's product.
- The topic of correlation is not picked so as to present a simulated preference upon the publicist or something like that as to propose that a superior deal is offered

⁵⁵ Hemant Goyal & Jitender Jain, *India: Advertising Law In India - Part 1, Global jurix advocates & solicitors*, Last Updated: 17 August 2012

than is genuinely the case. The comparisons are factual, accurate and capable of substantiation.

- The correlations are accurate, precise and equipped for substantiation
- There is no probability of the purchaser being deceived as an aftereffect of the examination, whether about the item promoted or that with which it is analyzed.
- The advertisement does not depreciate, attack or discredit the competitors products, and advertisers or advertisements directly or by implication.

Presently, **ASCI** is actively taking action against any advertisements making unsubstantiated claims, exaggeration, unfair denigration in violation of ASCI Code.⁵⁶

The **ASCI Code** further provides that an advertisement of a product of which the advertising is been prohibited or restricted by any law or by the **ASCI Code** must not circumvent any prohibitions by purporting to the advertisements for any other products and the advertising of which is legal by law or by ASCI Code.

To determine the presence of an indirect advertisement of a restricted product emphasis shall be given to the following:

- Visual content been communicated through the advertisement must depict only the product that is been advertised and not the one that has been restricted product in any form or manner
- The advertisement shall not make any of the direct or an indirect reference to the restricted products
- The advertisement shall not propose or iterate any statement promoting the prohibited products
- The advertisement must not use any particular colours and layout or any presentations associated with prohibited or restricted products
- The advertisement must not use situations typical for the promotion of prohibited or restricted products when advertising the other products.

⁵⁶ Hemant Goyal & Jitender Jain, *India: Advertising Law In India - Part 1*, Global jurix advocates & solicitors, Last Updated: 17 August 2012

To curb the surrogate advertising the Cable Television Networks Rules, 1994 has also imposed similar restrictions.

Article 19(1)(a) of the Indian Constitution protects the right to freedom of speech and expression which as per the precedence set by the apex court in various cases extended its application to advertisements. Such a freedom is also subject to the reasonable restrictions imposed as under the Article 19(2) of the Constitution of India.

Furthermore, the **ASCI Code** states that no advertisement shall be permitted which:

- Mocks any race, caste, color, creed, or nationality
- Tends to incite any person to do a crime or promote disorder, violence or intolerance
- Presents any criminality as desirable
- Directly or indirectly encourages any person, particularly minors, to imitate it, conveys any *modus operandi* of the crime
- friendly relations with a foreign state is been adversely affected

- Tends to incite the person to commit a crime, or cause disorder or violence or even breach of law or glorifies the violence and obscenity in any way.
- Presents criminality as is desirable
- Exploits national emblem, coins, or any part of the Constitution or the person or personality of a national leader or a State dignitary⁵⁷
- In its depiction of women, violates the constitutional guarantees to all citizens. In particular, no advertisement shall be permitted which projects a derogatory image of women
- Exploits social evils like dowry, child marriage
- Promotes directly or indirectly production, sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants. However a product that uses a brand name or logo which is also used for cigarettes, tobacco products,

⁵⁷ Ibid39

wine, alcohol, liquor or other intoxicants, may be advertised subject to prescribed conditions

- Promotes infant milk substitutes, feeding bottles, or infant food⁵
- Be wholly or mainly of a religious or political nature or be directed towards any religious or political end
- Contain references which hurt religious sentiments
- Endanger the safety of children or creates in them any interest in unhealthy practices or shows them begging or in an undignified or indecent manner.
- Promotes the goods or services that are in contrary with the provisions of Consumer Protection Act, 1986
- Contains any references which are certainly to lead the public to infer that the product that are been advertised or any of its substances or parts has some miraculous or super-natural property or quality which is quite difficult to state and prove.
- The picture and the audible matter of the advertisement shall not be excessively “loud”.
- Contains any indecent, vulgar, repulsive or obscene theme.
- All the advertisement shall be clearly distinct from the programme and shall not be in interference with the programme ie. use of lower part of the screen in order to carry captions, static or moving all alongside the programme.
- No programme shall further display advertisements more than twelve minutes per hour, which may include as per the discretion as ten minutes per hour for commercial advertisements, and two minutes per hour for a channel's self-promotional advertisement.

Cases

HUL's “Clinic All Clear” dandruff shampoo claimed that its shampoo had ZPTO, a special agent that stops dandruff. This claim was found to be untrue as ZPTO is a micro biocide but in reality dandruff is known to be caused by several other factors besides

microbes. HLL's research wing clearly overlooked this aspect. The advertisement was withdrawn.⁵⁸

Novartis India claimed that their disposable contacts ensure there is no protein build-up. This claim was found to be false. The advertisement was discontinued.⁵⁹

⁵⁸ Tania Maitra, *The Ethical Dimension of Advertisement*, SSRN, 2009

⁵⁹ Appeal no. 1483 of 1999 in Notice of Motion No. 2429 of 1999 in Suit no. 3677 of 1999. Bombay High Court (unreported).

Audit bureau of Circulations

The ABC founded in 1948 is a not for profit, voluntary organization consisting of Publishers, Advertisers and Advertising Agencies. It has done pioneering work in developing audit procedures to verify the circulation data published by those newspapers and periodicals which have earned the right to display its emblem.⁶⁰

The main function of ABC is:

- To evolve, lay down a defined standard and uniform procedure by which a member publisher shall compute its net paid sales.
- The circulation figure so arrived at is checked and certified by a firm of Chartered Accountants which are approved by the Bureau.
- Finally, the Bureau issues ABC certificates in every six months to those publishers whose circulation figures confirm to the rules and regulations as set out by the Bureau.

⁶⁰ Audit bureau of circulations,2013, <http://www.auditbureau.org/about-what-is-abc.html>

News Broadcasters Association Regulations

News Supporters Association("NBA") speaks for the private TV news & current undertakings of broadcasters or telecasters in India. Presently NBA has 20 driving news and current issues supporters (involving 45 news and current news undertakings channels) as its individuals. As indicated by News Broadcasting Standards regulations(NBA Regulations) issued by NBA any show (which incorporates ad) ought to be in agreeability with NBA's set of accepted rules. NBA's code has made methodology for consistent broadcaster who in breach inter alia of the following:

- a. Depiction of violence or intimidation against any women and children;
- b. Sex and nudity;
- c. Endangering the national security and integrity; and
- d. Abstaining from advocating or empowering superstition and occultism.

Telecom Regulatory Authority of India (TRAI)

Any person or institution or any legal entity that engages in any activity of telemarketing or bulk Short Message Servicing (*SMS*) is required to register itself with *Telecom Regulatory Authority of India (TRAI)* and must comply with the guidelines laid down by TRAI in this respect.

CONCLUSION

The problem therefore persists of misleading advertisements and has become serious in the country despite several legislations like the FSSA, COPRA, Drug and cosmetic act. In India advertisements for cigarettes liquor, pan masala, the ones which are harmful to the public continues to find a place on the television in one way or the other despite of the ban been placed.

These harmful companies are like the cockroaches which finds a way to live in the society besides the harmful nature of theirs. These are the ultimate winners and are best survivors which can do whatever for earning profits. They will find the way out to live and make profit.

The government on the other hand is not in the favor of legislating the same through a uniform law for all. The problem is at a growth and the problem is still subsisting in

CHAPTER IV- LAWS IN U.S.A. FOR REGULATION OF ADVERTISEMENT

INTRODUCTION

United States of America is a developed country with a major GDP coming from industrialization and modernization. With growth in the era of industrialization the upcoming businesses and the existing businesses needs to be promote itself as well as the products in the market. With a huge number of product paving its way to the market, there is a great no. of advertisements also coming to the same pool, with a huge number of consumers relying on it for the correct information about the product so that they could make their choice from the competition persisting in.

With the mentality of the businesses starving for the profits malpractice of different manner is a common thing to be witnessed. The one which is been hampered in this market is the individual. Thus in the market of advertisement there exist the malpractice through the misleading advertisement been communicated so as to gain the profits out of it.

The misleading advertisement is a normal happening that could be seen through the daily media such as television, internet or through print media. In the era of digitization the scenario is quite a hectic one as one mistake can spoil a great deal and furthermore can even cause mental, physical, monetary harm.

As per *Samuel Johnson* in 1758 said-

“Advertisements are now so numerous that they are very negligently perused, and it has therefore become necessary to gain attention by magnificence of promises and by eloquences sometimes sublime and sometimes ridiculous.”

Thus such a quote made in 1758 but the problem still persists and is certainly not a new one and thus has to be redressed in a serious manner.

IN USA, the Federal Trade Commission (FTC) oversees and regulates the advertising and marketing law. These laws can potentially impact many areas of the business, including labelling your products, conduct emailing and telemarketing campaigns, and further any health and environmental claims been made along with the socioeconomic responsibility matters such as how you need to advertise to children.

According to US (FTC) Federal Trade Commission, a deception occurs when:

- there is practice, misrepresentation, or omission that is likely to mislead the consumers;
- the consumer is acting responsibly in the given circumstances; and
- furthermore, the practice is material and consumer injury is likely possible because of the misrepresentation projected due to which the consumer chose the path which caused him/her an injury and if such deception wouldn't have been made the consumers would have chosen differently.

To consolidate the whole concept of misleading advertisement, the misleading advertisement can be sorted down to the three approaches or views of unjust advertising:

1. FRAUD
2. FALSITY
3. MISLEADINGNESS

The 3 approaches encircles the advertiser, the advertisement and the consumer beliefs about the product and moreover runs parallel.

Fraud : The malafide intent of the advertiser to gain profit from the consumer in a manner which is deceptive in nature. The intent of the advertiser is to deceive the consumer and has profit motive behind doing the same. However the intent is quite difficult to prove as there is no proof as such if no advertisement is been communicated.

Falsity: It depicts a claim fact discrepancy. It can be either related to price or product or any other. Different types of claim are as discussed earlier-puffery claim, data based claim or testimonial claim. This approach is more viable when there exist a regulatory framework to issue guidelines and standardize the meanings of words.

Misleadingness: This third approach deals with the consumer beliefs.it requires the observation of the false consumer belief in conjunction with the exposure to the advertisement. While the Falsity on one hand is a claim based discrepancy, misleadingness on the other is a belief based discrepancy. The consumer through the advertisement is made to belief something which is deceitful by the literally correct statements used in the advertisement.

Thus these three approaches helps to define a misleading advertisement.

LEGAL PROVISIONS

As per section 5 of the federal Trade Commission act it states the unfair means of competition, and its prevention by the commission.

As per the section the unfair methods of competition in or any affecting commerce, and unfair or deceptive acts or practices in or affecting commerce , are hereby declared to be unlawful.⁶¹

Further as per section 5 (4)(A) states for purposes of section 5 (a), the term "unfair or deceptive acts or practices" includes –

- i) acts or practices that involves foreign commerce and that causes or are likely to cause reasonably foreseeable injury within the United States;
or
- ii) involve material conduct occurring within the United States.

Thus the Section 5 of the act declares what are the deceptive and unfair act or practices subsisting. Moreover the Section 12 states that *dissemination of the false advertisements:-*

It states as:

Section 12 (a) Unlawfulness - It shall be unlawful for any person or, partnership, or any corporation to distribute or disseminate , or cause to be disseminated, any of the false advertisement-

(1) Through United States mails, or in or having an effect upon the commerce, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices, services, or cosmetics; or

⁶¹ Section 5(a), Federal trade commission act, 1914

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce, of food, drugs, devices, services, or cosmetics.

(b) Unfair or deceptive act or practice- The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection

(a) of this section shall be an unfair or deceptive act or practice in or affecting commerce within the meaning of section 45 of this title.⁶²

Thus section 12 specifically prohibits the false advertisements that is likely to induce the consumers to buy, food, drugs, devices or cosmetics.

Section 15 of the act further clarifies the definition of a false advertisement for the purposes of section 12 as one which is “misleading in material respect”. It states as-

Section 15(a) False advertisement :

(1) The term "false advertisement" means an advertisement, other than labeling, which is considered to be misleading in a material respect; and also in determining whether any of the advertisement is misleading or not, there shall be taken into account (among all other things) not only representations made or deemed to be suggested by the statement, design, word, device, sound, or any of the combination thereof, but also to the extent of which the advertisement fails to reveal facts of the material in light of such representations or material with respect to any consequences which may result from the use of the commodity to which the advertisement relates to under the conditions that has been prescribed in the said advertisement, or under such conditions as are considered to be customary or usual. No advertisement of a drug shall be deemed to be false if its distributed only to the members of the medical profession and contains no false representation of any material fact, and includes, or is accompanied at each instance with truthful disclosure of, the formula showing quantitatively each of the ingredient used in the drug.

⁶²Section 12 , federal trade commission Act,1914

(2) In the cases of oleomargarine or margarine an advertisement shall be deemed to be misleading in a material respect if in such an advertisement the representations are made or suggested by the word ,statement, grade designation, device, design, sound symbol, , or any combination thereof, that such oleomargarine or margarine is a dairy product, except that nothing contained herein shall prevent a truthful, accurate, and full statement in any such advertisement of all the ingredients contained in such oleomargarine or margarine.⁶³

Numerous precedences have further rectified the stand and stature of the misleading or false advertisement in USA.

The provision relating to the penalties under this Act is Section 14 for misleading advertisement and the penalty imposed in this is fine of not more than \$5,000 or by an imprisonment for not more than 6 months, or by both except in case of a violation committed after the first conviction of such person, partnership, or corporation the punishment shall be by a fine of not more than \$10,000 or imprisonment extending upto 1 year, or by both.

Thus in USA, the deterrence is quite high.

In the case of *Rhone-Poulenc Rorer Pharmaceuticals, Inc. v. Marion Merrell Dow, Inc.*⁶⁴

the court held that the drug manufacturer's advertisements, which featured the images such as the two gasoline pumps and an airline tickets with dramatically different prices, accompanied by the slogan "Which one will you choose?" was a literally false message, as it conveyed the inaccurate idea to the consumers that the manufacturer's drug and its competitor's drug could be indiscriminately substituted.

In *Coca-Cola Co. v. Tropicana Products, Inc*⁶⁵

the court held that images of the defendant's commercial advertising an orange juice, that depicted an orange that is being squeezed and further being poured directly into the

⁶³ Section 15, Federal Trade Commission Act.1914

⁶⁴ 93 F.3d 511, 516 (8th Cir. 1996).

⁶⁵ 690 F.2d 312, 318 (2d Cir. 1982)

carton made the advertisement vexatious and deceptive as it represented the false process of manufacturing, as in fact the juice was firstly heated and then frozen before packaging.

Similarly, in *S.C. Johnson & Son, Inc. v. Clorox Co.*⁶⁶

The Second Circuit considered that the falsity of advertising that was been focused on an image. There, the defendant's commercial and print advertisement depicted 2 plastic storage bags filled with water, and each containing a goldfish and further was hanged it upside down.⁶⁷ The plaintiff's plastic bag was depicted to be leaking continuously and with a fairly rapid rate. Based on the evidence presented at the trial, the court found the defendant's advertisements false as they falsely depicted both the risk and the rate of leakage of the plaintiff's storage bags.⁶⁸

CONCLUSION

The regulatory framework in USA is quite similar to that of India but has been well defined with no scope of any laches been left. Furthermore the procedure is quite similar but with a much better deterrence as the compensation or fine is too high in America as compared to in India. Moreover the framework in USA is well implemented and the power of suo moto is also been provided to them. Moreover the investigative powers are also been provided to them for a much better and reliable judgement.

⁶⁶ 241 F.3d 232 (2d Cir. 2001)

⁶⁷ Ibid. at 235-37.

⁶⁸ Ibid. at 239.

CHAPTER V- CONCLUSION

Talking about the present Indian scenario, it's in the developing stage and with the modernization touching the limits the whole scenario is undergoing a rejuvenating phase. With the new government kicking in the foreign investments from the whole world into India and inviting different multinational companies to invest in India the country from its national laws and regulations shall also facilitate their wellbeing in India and as well as control them or regulate them so as to safeguard the citizens of India too from the wrong done by the industries to the citizens for the profit motive.

The modernization on the one hand is a great start in the growth of the country but, the question arises are we in a state to tackle the flip side or the dark side that is coming along with it. In context with the topic the modernization is bringing new foreign investors and also the local or Indian companies to advertise for their products in the different media and further promote its product. But the dark side is also omnipresent which the misleading advertisement is, and the dark side is too perilous as it effects the public as a whole. The citizens of India are been inflicted, and thus such a problem is of grave seriousness.

The fundamental rights been protected by the constitution itself as under Article 19(1) is been violated and it's the duty of all the three pillars, the executive, the judiciary and the legislature to protect the citizens from such violations. The three pillars in consonance shall act for the betterment of the citizens of the country.

Moreover such practices destroys the `basic existence of the advertisement and challenges the same as one misleading advertisement challenges the information that is provided by the advertisement as a whole and as it is said a stale apple kept with the good ones makes the others stale too, thus this is what is happening in this scenario as well. The misleading advertisement been issued challenges the credibility of the information imparted by the rest of the advertisement that are truthful in nature.

Recommendations

Moreover in the Indian scenario, the plan to control misleading advertisements can be implemented in 3 pronged or steps or phases –

- Firstly, by strengthening the monitoring and implementation of existing laws/regulations/mechanisms
- Secondly, to further harmonize and update the existing laws/regulation so as to provide a nexus between all and further to make it simple for the judiciary as well as the public to understand .
- Thirdly, in the improved scenario, slowly move to self-regulation and lose the control regulatory system.

Moreover to curb the misleading advertisements the other recommendations are as follows-

- The freedom to file a complaint shall be properly regulated so as to stop the misuse of the same by filing of the frivolous complaints and that can be done by imposing the penalty on doing the same as in the case of USA laws.
- The Consumer Complaint Council shall be given much more power and further its decisions shall be not be disputed and respected.
- The self- regulation shall be properly adhered to.
- The misleading advertisement should be properly defined in such a manner so as to increase the ambit of the same to cover the all the aspects of misleading advertisement, as is in the USA federal trade commission act.
- There is no proactive monitoring as such as no suo moto cases can be undertaken by the CCC, until a complaint is been filed it cannot take cognizance in the matter. Due to this the self-regulatory body is not able to fulfill its goal of protecting the public from the misleading advertisements.
- Only larger campaigns are been monitored however the smaller campaigns should be given importance as well.

- The concentration shall be also put on the rural areas since most of the misleading advertisements takes place in the rural areas. Further the rural people who are uneducated and unaware should be educated of such so as to protect them from exploitation.
- The laws been legislated so as to protect the consumers from been exploited should be properly so as to stop the act such as quacks sitting in every small hut markets in the rural India selling potions of various diseases. Teleshopping channels routinely sell products based on superstition and actually promote it on air. Many self proclaimed God men continue to perform "miracles" and many fly-by-night financial companies continue to swindle money from the public by making tall promises of huge interest rates. the ASCI fails to reach to such an extent for the implementation.⁶⁹
- Misleading advertisement is a two handed clap and thus, Media space sellers are equally responsible along with advertising agency directly in many cases as there is a profit motive in this.
- A certification clearance before the release would be a preventive measure rather than existing reactive one.
- The regulatory body shall adopt stringent measures to undertake robust implementation mechanism. The steps to be taken are:-
 - Prompt action to be taken on filing of the complaint and use of power to pull out advertisement immediately from any further screening.
 - Regular tracking of communication modes that are carrying misleading advertisements.
 - power to assess and evaluate and investigate each claim by the advertisers and penalize the errant.

⁶⁹ FICCI, *Advertising Standards In India : An Introduction*,
http://www.ficci.com/Sedocument/20240/Survey_on_Advertising_Standards.pdf

- ASCI must initiate suo - moto action in case of any misleading advertisement for safe guarding the consumers even if there is no complaint registered.
- Filing of public interest litigation (PIL).
- Hefty monetary compensation in order to make the cost of non-compliance very huge so as to put a deterrent effect on such practices.
- Blacklisting or Ban for a specific period of the Advertisement makers
- More easy and simple accessible system for lodging a complaint. E.g. Online Forums, Facebook page etc.

The recommendations can be classified into three broad categories. Strengthening the mechanism for self-regulation, some new mechanisms/set up with Dept. of Consumer Affairs to deal effectively with menace of misleading advertisements and strict enforcement of provisions in the existing laws.

Reinforcing the Mechanism for Self-Regulation of ASCI needs to be further fortify its part. It is a superior technique to have territorial units considering the volume of publicizing in a geologically unfathomable nation as our own. The ramifications of reinforcing ASCI involves not simply human and other asset, it additionally incorporates the way that as sympathy toward the buyer the perceivability of ASCI is upgraded and it gets to be as known as an office like the Censorship Board for the film business. The methodology of reinforcing ASCI ought to have the capacity to not simply request that promoters change a promotion or prevent it from being broadcast it should be self-administrative as well as be obligatory. There is no procurement for restorative promotions to invalidate the harm officially done by a false and deceiving commercial. There is earnest requirement for a strategy for remedial advertisements. ASCI must have customary system for association with customer associations to admire shoppers' worries. Change ASCI Code to force remedial promotions, which can likewise go about as an impediment to promoters. Numerous nations have such procurements. The most optimized plan of attack arrangement of ASCI is as of now just for publicist to promoter.

This framework ought to be made accessible for protestations which have a genuine effect on the wellbeing, security or monetary diversions of the purchaser. The profit of ASCI's audit framework for the CCC's choices, now accessible just to promoters, ought to be stretched out to complainants too. The Ministry of Consumer Affairs need to consolidate ASCI in the 'Jago Grahak Jago' battle for teaching regular buyers about ASCI and its capacities and to advance its redressal system. The accompanying are some particular recommendations.

- Mandatory participation of ASCI. Participation of ASCI be made mandatory for all industry players with introduction to promoting industry

Expand scope of ASCI code to computerized and social networking: A solid advanced effort system is obliged to screen computerized and home shopping systems including outside 32 publicizing and portable publicizing. Huge advanced organizations like Google, YouTube, and Twitter must join as individuals and obligatorily sign on to ASCI code

- Integrate ASCI Code into statutory provisions: Sub rule (9) of rule 7 having Advertising Code of the Cable Television Network Rules, 1994 prohibits TV channels from carrying any advertisement that is in violation of the ASCI Code. Similar provisions may be introduced in other statutes like Press Council of India's Advertising Code to ensure that advertisements while in conformity with the statutory provisions also adheres to the ASCI Code.⁷⁰
- Suspension, pending investigation: Control is required on account of advertising with sexual overtones, religious underpinning, and delivery of magical remedies/promotions in the mushrooming Indian advertising industry. To stop airing such advertisements a special fast track process which involves temporary suspension of an advertisement, which prima facie causes harm to the society, pending final decision by CCC can be implemented.
- ASCI should have a mechanism to collate the information about habitual offenders and share that information about advertisers/ad agencies with the nodal ministry for strict action.

⁷⁰George Cheriyan (Team head) Deepak Saxena & Amarjeet Singh, *Consumer Unity & Trust Society* ,24, http://cutsinternational.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf

Strict Enforcement of Existing laws & strengthening of Consumer Fora As discussed in earlier sections, the several acts/laws in India is having strong provisions to deal with unfair trade practices and misleading advertisements. What is lacking is the enforcement of those provisions. In addition there is a need for strengthening the existing grievance redressal mechanism, especially under COPRA.

Few of the suggestions to strengthen the consumer grievance redressal mechanism in India are given below.

Furthermore there shall be certain changes that should be made in the consumer protection act such as:-

- The power of investigation shall be given to the consumer forum so as to judge in a more effective manner.
- Research support by a new set-up in matter of misleading advertisements, as and when required shall be provided
- Complaints should be provided with financial/legal support in the matter and the burden of proof should be on the respondent, rather complainant.
- In order to make grievance redressal process more convenient for consumer the effective consumer education with respect to consumer rights should be given free technical/ legal assistance to complainant will make the process more convenient for consumers. The Central Government has already considered some of these suggestions and proposed amendment to the CCOPRA, 1986 through Consumer Protection Amendment Bill, 2011. This Bill is still pending before the Parliament. After implementing this amendment COPRA will become better than before.⁷¹

Further, in the safety of children following changes shall be made- The Food Safety and Standards Act, 2006 shall provide for even stiffer penalties and the provisions shall be strictly implemented. Advertising and marketing of food not fit for children shall be regulated properly such as- food loaded with fat, salt and sugar. The World Health

⁷¹ FICCI, *Advertising Standards In India* : An Introduction,
http://www.ficci.com/Sedocument/20240/Survey_on_Advertising_Standards.pdf

Organisation (WHO) recommendation on the marketing of foods and the non-alcoholic beverages to children shall be followed in letter and spirit , perhaps for the safety a special framework for protection against children-targeted advertisements shall be made.

INSPITE of the recommendations been provided, still even if the present scenario can be handled by the ASCI but there is no surety that the same remains for the future as well thus there is a need in future to have Govt. Regulation in this sector as the giants in industry would be facing the ASCI and the need of the government being a sovereign should be there to protect with the help of judiciary to be backed by. As self-regulation can` t be so effective thus a statutory regulatory body armed with the teeth to punish the guilty is required.

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