

THE PRESSING NEED OF HAVING STRONG LAWS ON MISLEADING ADVERTISEMENTS

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Abstract

Advertising plays an important role in the contemporary economy of the country as it influences the market trends and consumption. While there are many benefits of advertising the product, there are also concerns about the product if the advertisement is misleading or false. Advertisement on any product by any company should be factual and based on reasons to believe to be true. Misleading advertisement is violation of consumer rights and amounts to unfair trade practices. It not only affects the consumer interest but also harms the business and company reputation. There are many cases where a company is found guilty of making misleading advertisements. To counter such cases, there is a strong need of having stricter enforcement mechanisms and laws to counter this problem.

Key Words- Misleading Advertisement, FSSAI, ASCI, Unfair practices, Consumer Protection

❖ Introduction-

For any company to make its product popular and favorite among the masses, it needs strong marketing for the product. One such way the company promotes its product is through advertisement. The manner in which the product is advertised and sold has changed drastically over the years. Earlier companies did not bother to spend much on advertisement, they keep it simple yet effective. But with the advent of globalization the competition has risen considerably. It is now becoming difficult for the small company to survive, if they do not aggressively promote and advertise their product. As a growing challenge to survive, the companies have been involved in creating creative advertisements to lure more consumers to use their product.

Advertisement is made for the larger public interest instead of focusing on certain people only. Advertisements are crucial for communication between business and consumer. Consumers rely on such commercials to get a better knowledge of the product and ultimately make the informed choice of whether to purchase the goods or not.

In this way both the business and people get benefitted, where companies earn healthy profits and the customer gets the perfect choice of the product. Advertisements also play an important role in earning the revenue for the newspapers, televisions, internet and even OTT platforms.

There are several advertisements that are lauded for being thought provoking in nature, for subtle messages being conveyed through the commercial and as part of campaigns for general awareness and public welfare. But at the same time many advertisements are criticized and opposed because they provide false, misleading, incorrect information that affects not only the reputation of the company but also harm the interests of the consumers.

So, the question arises how can an ordinary person be sure whether the advertisement is genuine or misleading. Well, it's not rocket science, it can be ascertained by closely watching the advertisement itself.

Illustration- One weight loss company advertises that by taking our product your weight will get reduced by the end of month.

Similarly, another weight loss company in their advertisement says by taking our product your weight will reduce by half in just 10 days.

A normal person will give more attention to companies boasting to reduce the weight by half that too in 10 days without any exercise or reduction in diet, but just by taking their product. This advertisement can be misleading if a person who takes their product and the weight is not reduced as per advertised and also there is no scientific backing to prove how the weight shall be reduced.

In torts law, there is a famous case of *Carlill vs carbolic smoke ball*²⁴⁷⁷, where the advertisement was intended to make people use the smoke ball to prevent contacting the epidemic, such a puffery statement made the company liable when the plaintiff caught the disease even after taking the smoke ball as prescribed.

Thus, the above illustration and case highlights how consumers are manipulated into buying the products and are felt cheated in the end. It is a collective mistake of both consumer and company who make such deceiving advertisements. Since consumers are not vigilant and aware they are targeted by such companies to target innocent people.

Taking into account various recent examples where the companies have been found guilty of misleading advertisement, there remains a growing need of having strong and deterrent laws and rules to curb the menace of false and misleading advertisement.

Baba Ramdev's Patanjali Controversy that drew strong criticism from Supreme Court-

The origin of this controversy can be traced back to the times of coronavirus in 2020 and 2021. While the country was grappling with pandemic and there was struggle to get the vaccine of virus, Patanjali an Ayurveda based company owned by Baba Ramdev, published an advertisement which claimed by taking

'coronil kit' the effect of virus will be finish and person will not have to take any further medicine. While this boastful claim was not enough, the advertisement went further and said allopathy is spreading misconception and called allopathy as "stupid and bankrupt science" thus evoking criticisms from all around.

"Indian Medical Association [IMA] filed the petition before the Supreme Court in August 2022 based on such misleading advertisements circulated all around by Patanjali"²⁴⁷⁸. IMA argued that as a result of such advertisement many people took the alleged medicine and the ad was responsible for "continuous, systematic, spread of misinformation".

The Court initially warned the company over its claim of completely curing the disease without providing any scientific evidence and possible fine of one crore on every product such claim is made.

Despite this the advertisement continued to get published, which led to strong outburst by the Supreme Court. The court issued strict guidelines on the company to publish apology letters in the newspaper addressed to the public for their false and misrepresented advertisement.

What Legal Acts were discussed in the case-

➤ **Drugs and Other Magic Remedies Act, 1954 [DOMA]**

The act says any advertisement that is related to medicine or drug and is found to be false or misleading, the company who is advertising shall be liable for "six months imprisonment and or fine for the first-time offence. If found liable once again, the imprisonment can be extended to one year"²⁴⁷⁹.

➤ **Consumer Protection Act 2019-**

Section 89 of the act says any manufacturer or endorser who is "found to be guilty of spreading false or misleading information shall be liable to pay fine of Rs 10 Lakh for first time offense and even after they are found guilty the fine will

²⁴⁷⁷ *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256

²⁴⁷⁸ Writ Petition Number (Civil)- 645 of 2022

²⁴⁷⁹ Section 7 of Drugs and Magic Remedies Act, 1954

increased to Rs 50 Lakh and imprisonment upto five years, along with this the endorser's right to advertise the product will also be restricted for one year and for subsequent breach restriction will increase to three years"²⁴⁸⁰. To determine the quantum of fine it would depend on factors as to case-to-case basis.

Questions were raised on the functioning and credibility of the Uttarakhand State Licensing Authority for granting the license to product without proper examination and ascertaining the quality of the products sold straight to people.

This highlights the gross incompetence by the state authority for failing to take proper action. Even when the news broke out regarding false products being sold, the authority failed to exercise its right to take necessary action to prevent further sale of the products.

There was agreement between AYUSH the nodal ministry to Ayurveda for no publication of any advertisement which was misleading, still the advertisement was published for nearly two years and nobody dared to question it.

The apology given out by the head of Patanjali was deemed to be not satisfactory by the Apex court. The amount of suffering faced by the people is no match to rendering written apology, stricter action needs to be carried to deter such practices.

This was not the first time that Patanjali has found itself in controversy. In fact, various products of the company from toothpaste, honey, medicines, skincare products are found to be violative of the advertisement shown about the product. In FY24 itself Patanjali is found violative of advertisement rules more than 30 times.

➤ **Advertising Standards Council of India Report 2024-**

The council in its report reveals some eye raising revelation about various companies

found guilty of misleading and false information.

"The Mamaearth parent company Honasa Consumer Pvt Ltd was found to be the biggest violator of the advertising rules with as many as 187 ads found to be incorrect about the product. The Honasa company deals with skin care products. Sports betting companies WinDaddy and Fun88 India had 98 ads each violative of the rules.

Women fashion retailing platform Urbanic's parent company Maysquare Lifestyle Pvt Ltd, Rummy 24 run by Ability Games, makeup brand Renee cosmetics, and well-known firms like Unacademy and FirstCry all were found guilty of violating advertising standards and norms.

Betting, gambling, healthcare firms are among the major violators of the advertising norms. Also, Food products-based companies continued to advertise false claims regarding their food products"²⁴⁸¹.

Another big problem that has arisen is the problem of ads in digital space. The current acts in the country do not have the adequate laws to include the advertisement in the digital medium. Majority [nearly 85%] of the complaints made against false and misleading advertisements last year were made on those appearing on digital platforms. Many ads were even found to be guilty of promoting unsocial activities like betting, liquor, e-cigarettes, tobacco which harm the general interest of the public.

❖ **The rising trend of digital ads is a sign of worry?**

Today digital platforms have become the first choice of the businesses and companies to promote their product and advertise. These advertisements often appear on the platforms for promotion purposes. However not everyone can advertise, some are outrightly banned from advertising, while others are restricted. In many sectors specific advertisements like "Real Estate

²⁴⁸⁰ Section 89 of Consumer Protection Act, 2019

²⁴⁸¹ Annual Complaints Report 2023-24 by Advertising Standard Council of India

the companies have to strictly follow the regulations, failure to which can amount to legal violation". Such incidents of rising violations can be seen in the last 3-4 years.

In the time of the pandemic and since then there has been a tremendous rise in advertisement related to health and medicines. Lot of businesses are directly advertising on online mediums.

➤ **How misleading advertisement affects the general public-**

Among all the advertisements that broadcasted or published, the food industry is severely affected. A research study revealed that in India "39% of food advertisement targeted the general audience. But the cause of worry is that 61% of food advertisements target young children"²⁴⁸². If the child is repeatedly shown such kind of misleading ads related to junk foods and unhealthy items, they make it as their own favorite preference which affects their health.

To deal with such a situation, "the United Kingdom in 2008, made a law which put a complete restriction on junk food ads which will target children below 16 years"²⁴⁸³. In 2023 the UK decided to ban junk food advertisements before 9pm on television, which resulted in substantial loss to broadcasters.

So much importance is given to having proper, accurate and factual food advertisements because it affects almost everyone since human beings survive eating food. Having a high proportionate number of misleading advertisements is cause for worry since today "more than 90% kids eat packaged foods 68% people consume sweetened beverages at least once a week. While 53% of people consume such beverages on a daily basis"²⁴⁸⁴. Such a high rate of consumption is influenced by advertisements. more than 2 lakhs advertisements are shown on daily television.

• **3 major ways in which the companies mislead the consumers –**

1) When the company **violates the Right to Information**

Such companies which claim exaggerated claims on the product

2) When the **consumer's Right to choose is infringed-**

When the company purposefully try to hide the important material facts to the consumer

3) **Right to safety-**

When the company, without any scientific claim, still claims that it would cure the disease or reduce weight, in such a situation the right to safety of the consumer is impacted.

We now look at the various food safety bodies in India and what work they do-

➤ **Food Safety and Standards Authority of India-**

The main purpose of this body is to "set, maintain and regulate the food standards" of various food products. Let's understand the role better by taking an example of a company involved in food production. Before the said company can sell the food, the company would be required to get the FSSAI approval and license, then only it can sell the food items in the market. The license indicates that the food product is tested and complies with the food safety standards of India.

➤ **The Advertising Standards Council of India [ASCI]-**

The main objective of this body is to "oversee and monitor the advertisement in any medium" like Television, print or online. Also, they have to ensure that the Ads are not misleading or controversial in nature and are safe to publish without hurting the sentiments of people. They also have the code for self-regulation of advertising content in India.

➤ **Ministry of Consumer Affairs, Food and Public Distribution-**

This ministry is overlooking the consumer protection laws and regulation related to "packaged food items, price monitoring,

²⁴⁸² WHO Report on Evidence of pervasive marketing

²⁴⁸³ United Kingdom Law on HFSS Products, government of UK

²⁴⁸⁴ WHO Report on Prevalent diseases in young children

consumer movement and also implementation of Bureau of Indian Standards [BIS].”

➤ **Central Consumer Protection Authority [CCPA]**

This authority protects, promote and enforce the consumer rights and also takes action against the misleading advertisement. CCPA in June 2022, issued the Guidelines for prevention of misleading advertisement to ensure the consumers are not deceived.

These all acts and bodies ensure that food products have quality control, adequate price and all necessary standards are followed. However, despite the laws in place, there still remain the loopholes in the system, which companies seek to get the benefit of.

The major concern is that there is no standard or uniform definition about the misleading advertisement. what might be misleading for one person may seem quite normal for another, this led to more problems than having a solution to counter.

In 2020 FSSAI did try to make an impressive guideline regarding those food products that are high in fat, sugar, salt, sale of which shall be banned within the school canteens and 50 meters near the campus. But since these were mere guidelines, no strict enforcement has taken place by the school or colleges.

There are companies which sell their product as “health drinks” despite having no such healthy effect, why such advertisement is not dealt with strict action or any law or policy to regulate.

Nestle, as much as the company is famous, is muddled with lots of controversy. Nestle’s Cerelac and Nido baby products are quite popular. Cerelac is instant cereal and comes in various varieties, while Nido is powdered milk. Public Eye, a Switzerland based NGO and International Baby Food Action Network published a detailed report²⁴⁸⁵ which showed that the same product sold in poor and developing countries including India contain

higher amounts of added sugar as compared to the American and European market. Doctors have said that no added sugar food should be given to infants and even Nestle website has the same guideline, such hypocrisy cannot be tolerated. In response “Nestle had to reduce the sugar level by 30%”. Nestle in its ad claims its product has many nutrients and is healthy, but not in reality. Added sugar can even be seen as an addiction as it releases dopamine also called as pleasure hormone.

In 2015, Nestle Maggi found itself in hot water when it was found that MSG and Lead was much higher than the above permissible limit, which if consumed in higher quantities can severely affect the body. As a result, Maggi was temporarily banned in the country.

In the 1970s as well Nestle faced many protests and cases on the allegation that Nestle through its aggressive marketing used to sell unhealthy baby milk, which caused the death of many children in poor countries.

Nestle alone is not making misleading claims or ads, there are several companies like Bournvita, Complan, KFC, McDonalds, any company that makes potato chips, the quality of product in India and same in Europe and USA is different in terms of quality. In the past as well many big and reputed companies like Britannia, Unilever, Kellogg’s, Dabur, Cadbury among others brands have been caught by regulators for making embellishing advertisements.

“ASCI asked Britannia to revoke the Milk Bikis ad starring Amitabh Bachchan, which promoted the biscuits as full of flour and wheat energy, but instead contained items unfit for children”²⁴⁸⁶.

During the times of Covid, “Dabur’s Chyawanprash promoted an advertisement starring Akshay Kumar to consume 2 spoons of chyawanprash each day, which will prevent people from coronavirus. ASCI conducted enquiry on the product and found that the

²⁴⁸⁵ Public Eye Report on Nestle April 2024

²⁴⁸⁶ www.ETBrandEquity.com (2023). *ASCI asks Britannia to revoke Big B’s Milk Bikis ad - ET BrandEquity*. [online] ETBrandEquity.com.

immunity does get better after its consumption, but nowhere it can fight against coronavirus"²⁴⁸⁷.

Recently, the central government asked all e-commerce websites to "remove Bournvita" and similar companies from the 'health drink' category. HUL suo-moto removed Horlicks from the health-drink category and rebranded itself as a functional nutritional drink.

➤ **MDH and Everest Food Spices Controversy-**

Both are well known companies in the food spices sector and occupy prominent positions in the market. However recently Ethylene Oxide was found in MDH and Everest spices. It is a harmful pesticide that can cause cancer in our bodies, "classified as Group 1 carcinogens by the International Agency for Research on Cancer". This report was given by Hong Kong Food Safety and also the Singapore Food agency published its own report, putting a huge question mark on the role played by the Indian government in maintaining food safety. Ethylene oxide at room temperature is gas 'used to make other chemicals like antifreeze, which is used as coolant in vehicles. Same ethylene oxide is used for medical purposes for sterilization'. A Singapore report says such chemical is used in food but only to limit quantity, in Europe it is completely banned.

This is a very serious issue because millions of households in India use these food companies while cooking. In fact, the tagline of MDH is "Asli Masale Sach Sach" and having ethylene oxide in their product makes a strong case of misleading the consumers. Once the report came out, the Indian Spices Board, a subpart of the Ministry of Commerce, asked the MDH and Everest what kind of quality check they are doing. FSSAI also directed the companies to redo the quality checks.

²⁴⁸⁷ afaqs! (2021). *ASCI asks Dabur to 'modify or withdraw' Chyawanprash ad claiming Covid protection.* [online] Available at: <https://www.afaqs.com/news/advertising/asci-asks-dabur-to-modify-or-withdraw-chyawanprash-ad-claiming-covid-protection>

❖ **Case of Fake Advertisement in Educational Sector-**

In recent times many coaching centers have become business models. There has been a tremendous rise in competition among the students in competitive exams. The coaching institutes are often involved in the race to give the maximum number of top ranker's students in the country. Many coaching centers pound on the opportunity to show that their coaching helped the student to get prestigious All India Rank 1. Once the result is declared many coaching centers inadvertently publish the advertisement that the student took our coaching that helped him/her to get the desired rank.

Such cases of advertisement are being done to attract more students to join the coaching centers.

Even the colleges or universities are found guilty of purposefully putting the wrong information about the campus facilities, placement record to attract the students to join their institute.

❖ **What Solutions can be taken to counter such Misleading Advertisement-**

➤ **Better food labeling on the product-**

In many countries including India, the nutritional value of the food item is included in the back of the product. However, the consumers don't bother to read all these details. They at max will check brand name, price and expiry date of the product. To solve this problem, FSSAI was discussing introducing a health star rating for packaged goods just like energy ratings in electric goods. This same solution is already there in countries like Australia and New Zealand.

➤ **Limit Celebrity Endorsement on such advertisement which are misleading-**

When famous Actors endorse any particular product, it creates lasting impressions on the audience and are attracted to the product. Recently, Akshay Kumar and Shah Rukh Khan came under immense criticism for promoting Vimal pan masala as Elachi and mouth freshener.

➤ **Mandatory Health Warning-**

Junk Food must carry warning labels as what is healthy and what is unhealthy. If a cigarette box contains pictorial health warnings, similarly food products especially for children should include warnings such as high on sugar, may cause obesity, diabetes.

➤ **Progressive Taxing-**

Columbia is the first country in the world to pass an ambitious junk food law to tackle lifestyle diseases. Ultra-processed food will attract extra progressive tax. The reason behind making this law is because 75% of deaths in Columbia are due to non-communicable diseases. While putting extra tax on food items will be met with protests, taking health considerations and its impact should not be forgotten.

➤ **Stricter Laws and Enforcement Mechanisms-**

ASCI is the prominent body overlooking the advertisement standards in India. FSSAI is the main body responsible for quality checks on food items. Both the bodies have fallen short in ensuring the misleading advertisement is kept to minimum levels. Having strict laws and compulsory compliance will force the companies to make the necessary changes. A strong deterrence should be created so that there is no abuse of law and rights of consumers.

➤ **Educating the consumers-**

Majority of consumers are unaware of various ingredients used in products before purchasing. Making them aware about the health benefits should be the priority of the government and public awareness is very necessary.

Conclusion-

Commercial advertising is having a profound influence on the people; hence the advertising must be truthful and correct. Despite the fact consumer protection has been enacted for almost 40 years now, the issue of misleading advertisement still persists. This misleading advertisement affects the larger public, thus warranting immediate attention. Consumers

themselves should be aware about what is good and bad for them, to reduce the further risk. Having comprehensive laws alone is not enough, collective efforts will be required to curb this problem.

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