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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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MISLEADING ADVERTISEMENT AND CONSUMER PROTECTION IN INDIA IN COMPARISON WITH USA AND UK

AUTHOR – GURDEV KAUR, STUDENT, LAW COLLEGE DEHRADUN, UTTARANCHAL UNIVERSITY, DEHRADUN,
UTTARAKHAND

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Abstract

Misleading advertising poses serious danger to market equity, consumer rights, and the overall integrity of business. This article reports on the phenomenon of deceptive advertising, examines its most prevalent forms such as false presentation, exaggeration of benefits, and hidden charges. It cites the harmful implications on consumers such as financial loss, erosion of trust, and impaired choices. The controversy is extended to global consumer protection law and the role of such regulatory bodies as the Federal Trade Commission (FTC), Advertising Standards Authority (ASA), and India's Central Consumer Protection Authority (CCPA) in limiting such practices. Further, it outlines available remedies under the law, penalties to be imposed upon offenders, and recent enforcement proceedings. Despite such safeguards, enforcement issues—most notably in the digital advertising platform and cross-border contexts—remains a lingering concern. The article emphasizes the imperative need for consumer education and online literacy as ancillary tools in identifying and countering misleading advertisements. Finally, it advocates more stringent regulations, ethical advertising, and engaged consumer involvement to make the advertising space transparent and credible.

Keywords: Misleading Advertisement, Consumer Protection, FTC, ASA, CCPA, Consumer Protection Act 2019, Consumer Rights

Introduction

In the modern media-driven world, consumers are overwhelmed with advertisement, so they become all the more vulnerable to false advertising. Such deceitful tactics, from exaggerated claims to concealing vital details, erode consumer rights and pervert market fairness. Tackling this worldwide issue, India's Consumer Protection Act, 2019 brings in elaborate measures, in particular, instituting the Central Consumer Protection Authority (CCPA). Equipped with Section 21 of the Act, the CCPA can penalize manufacturers and endorsers for releasing false advertisements and thus uphold ethical marketing practices and consumer confidence. (Nikesh Sharma, 2021)

Internationally, there are various frameworks that support these aims. The United Nations Guidelines for Consumer Protection (UNGCP) promote fair business practices and highlight the need for correct information to enable consumers. The OECD Good Practice Guide on Online Advertising provides guidelines to avoid deceptive marketing, particularly on online platforms. The European Union's Unfair Commercial Practices Directive (2005/29/EC) forbids misleading and aggressive commercial practices, providing a high level of consumer protection within member states. In the United States, the Federal Trade Commission (FTC) proactively enforces against misrepresentation in advertising, as seen in the \$10 million settlement with CarShield for misrepresented

claims regarding vehicle service contracts. (Aarya Srivastava, 024)

The paper explores the systemic problems of misleading advertisement and analyzes the legal, regulatory, and practical regimes that deal with them in various jurisdictions. It analyzes the efficacy of enforcement strategies, the difficulties faced by regulators in the digital age, and the changing role of consumers as vigilant monitors. In an examination of court precedents, regulatory policies, and public campaigns, the research recommends an integrated approach—combining legal deterrence and consumer empowerment—to maintain ethical standards of advertising in both traditional and digital media spaces. (J. Edward Russo, 1981)

Regulatory Framework

To counter the menace of deceptive ads, numerous nations have enacted strong consumer protection laws. Such laws seek to make advertising procedures transparent, accountable, and equitable. In America, the Federal Trade Commission (FTC) regulates the Federal Trade Commission Act, which forbids "unfair or deceptive acts or practices in or affecting commerce." Equally, the United Kingdom is regulated under the Consumer Protection from Unfair Trading Regulations 2008, which criminalizes misleading consumers by acts or omissions. In India, the Consumer Protection Act, 2019 provides specific provisions against misleading advertisements. It defines a misleading advertisement as one that falsely describes a product or service or gives a false guarantee likely to mislead consumers. The Act empowers the Central Consumer Protection Authority (CCPA) to take action against false and misleading ads.

• USA

In the United States, the Federal Trade Commission (FTC) regulates truth-in-advertising statutes to shield consumers against misleading advertisement practices.

Key Provisions

Truthfulness and Evidence: Advertisements should be truthful, not deceptive, and backed by evidence. Statements must be explicit and founded on credible data.

Legal Basis: Section 15 of U.S. Code § 52 makes it illegal to disseminate false advertisements, particularly in marketing products or services.

Enforcement: The FTC may order penalties, issue cease and desist orders, and require corrective advertising. As an example, Williams-Sonoma was penalized almost \$3.2 million for deceptive marketing of items as "Made in USA." (Lia, 2024)

• UK

In the UK, the Advertising Standards Authority (ASA) regulates advertising standards so that advertisements are legal, decent, honest, and truthful.

Key Provisions

CAP Code Compliance: The Committee of Advertising Practice (CAP) Code provides guidelines to avoid misleading advertising. Section 3 specifically deals with the requirement of clarity and substantiation in advertisements.

Transparency: Adverts should be distinctly identifiable from editorial. For instance, a Scottish Power advert was removed for copying the style of a TV programme, risking confusing viewers that it was part of the show.

Sanctions: The ASA can demand non-compliant adverts to be changed or pulled and refer serious offenses to Trading Standards for prosecution. (asa.org.uk.com)

• India

India has established a comprehensive legal framework to protect consumers from misleading advertisements, primarily through the Consumer Protection Act, 2019 and supplementary guidelines.

Key Provisions

Definition of Misleading Advertisement

Under Section 2(28) of the Consumer Protection Act, 2019, a misleading advertisement is defined as one that:

Provides false descriptions of a product or service; or

Gives false guarantees or is likely to mislead consumers regarding the nature, substance, quantity, or quality of a product or service; or

Constitutes an unfair trade practice through express representation; or

Deliberately conceals important information;

Regulatory Authority: Central Consumer Protection Authority (CCPA)

Created under Section 10 of the Act, the CCPA is authorized to:

Investigate contraventions concerning consumer rights and unfair trade practices,

Order the discontinuation or alteration of misleading advertisements,

Impose fines on manufacturers, advertisers, and endorsers,

Bar endorsers from advertising products or services for a period of time.

Penalties for Misleading Advertisements

Section 21: The CCPA may impose a penalty of up to ₹10 lakh on manufacturers, advertisers, and endorsers for misleading advertisements. For repeated offenses, the penalty can go up to ₹50 lakh.

Section 89: Offenders can be imprisoned for up to 5 years, fined up to ₹50 lakh, or both.

Guidelines for Prevention of Misleading Advertisements and Endorsements, 2022

These guidelines, published by the CCPA, seek to:

Ensure advertisements are truthful and not misleading.

Ban surrogate advertising.

Require endorsements to be based on true opinions.

Prevent bait advertisements that entice consumers with good deals without the intent to deliver them.

Sector-Specific Guidelines

Recognizing the prevalence of misleading advertisements in certain sectors, the CCPA has issued specific guidelines, such as:

Coaching Sector Guidelines (2024): Addressing false claims and deceptive practices in educational coaching advertisements.

Role of the Advertising Standards Council of India (ASCI)

The ASCI is a self-regulatory organization that:

Monitors and ensures ethical advertising practices.

Addresses consumer complaints regarding misleading advertisements.

Collaborates with government bodies to uphold advertising standards.

India's legislation, synthesizing statutory provisions and self-regulation, aims at safeguarding consumers against deceptive advertising. The Consumer Protection Act, 2019, coupled with the active role of CCPA and ASCI, ensures advertising practices are transparent, true, and in the consumer's best interest. (Chhabra, 2021) (Densy, 2024)

Regulatory Authorities

Indian, US, and British regulatory bodies have critical roles in deterring deceptive advertisements, protecting consumers through enforcement, rules, and coordination. An overview of their roles follows:

- India: Central Consumer Protection Authority (CCPA) & Advertising Standards Council of India (ASCI)

CCPA: Formed under the Consumer Protection Act, 2019, the CCPA has the authority to investigate and penalize false advertising. It has the power to fine, direct the stoppage of fraudulent advertisements, and ban endorsers from advertising products for certain durations.

ASCI: A self-regulatory organization that oversees the content of advertising to ensure compliance with ethical norms. ASCI examines complaints and has the ability to suggest

changes or withdrawal of non-compliant advertisements.

Collaboration: The CCPA and ASCI have collaborated to tighten advertising regulation. ASCI refers non-compliant ads to the CCPA for necessary action under the Consumer Protection Act. (Densy, 2024)

- United States: Federal Trade Commission (FTC)

FTC: The main federal agency that enforces truth-in-advertising laws. The FTC's Division of Advertising Practices ensures that ads are truthful, not deceptive, and supported.

Enforcement Actions: The FTC watches for advertising in many media, including the internet, and acts against misleading marketing tactics. For example, it has sent notices to many firms concerning unsubstantiated claims about products. (Richards, 1990)

- United Kingdom: Advertising Standards Authority (ASA)

ASA: A self-regulatory body that is independent and that regulates advertising in every possible medium in the UK. It makes sure advertisements are legal, decent, honest, and truthful.

Regulatory Actions: ASA examines complaints and actively monitors advertisements. It has disciplined firms for false advertising, including prohibiting ads that employed "dark pattern" techniques to deceive consumers.

Enforcement: Although the ASA does not possess statutory powers, it is able to refer advertisers who do not comply to Trading Standards for enforcement and collaborates with other regulators such as Ofcom. (PLLC, 2023)

These agencies together provide that the advertising methods are fair and transparent, safeguarding consumers against misleading advertising methods.

Legal Remedies

Consumers who have been deceived by false advertisements have several legal remedies in India, the United States, and the United

Kingdom. The following is an overview of the available recourse in each country:

- India: Legal Remedies under the Consumer Protection Act, 2019

The Consumer Protection Act, 2019 provides consumers with the power to pursue redress for misleading advertisements through the following channels:

Filing Complaints: Consumers can file complaints with the District, State, or National Consumer Disputes Redressal Commissions for complaints related to misleading advertisements.

Compensation and Damages: Victims can be compensated for losses, pain, and suffering, and, in some cases, punitive damages.

Penalties for Advertisers: The Central Consumer Protection Authority (CCPA) can impose a fine of up to ₹10 lakh on manufacturers, advertisers, and endorsers for false advertisements. Repeat offenders can face increased penalties and endorsement bans.

Other Legal Provisions: In health-related claim cases, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 forbids false claims of curing diseases such as diabetes or asthma, with the offenders being put behind bars and fined.

- United States: Legal Remedies under Federal Law

In the United States, consumers have several ways to deal with false advertising:

Federal Trade Commission (FTC) Enforcement: The FTC may act against misleading advertisements, requesting injunctions, fines, and corrective advertising in order to protect consumers.

Private Lawsuits under the Lanham Act: Competitors may bring civil actions for false advertising under Section 43(a) of the Lanham Act, seeking damages or injunctive relief.

State Consumer Protection Statutes: Numerous states have false advertising statutes providing for consumer lawsuits against companies for

deceptive practices even when there are no federal claims.

- United Kingdom: Remedies through Consumer Protection Legislation in the UK

In the United Kingdom, the following remedies may be sought against misleading adverts:

Complaints to the Advertising Standards Authority (ASA): ASA looks into complaints regarding misleading ads and has the power to order their revision or withdrawal.

Trading Standards Enforcement: Trading Standards officers can apply to courts for an injunction to prevent misleading advertisements and prosecute perpetrators under the Consumer Protection from Unfair Trading Regulations 2008.

Civil Enforcement: Consumers can bring civil action for damages in case of loss caused by deceptive advertising activities.

All these legal frameworks in combination strive to discourage misleading marketing practices and grant consumers options to seek remedies and enforce their rights.

Enforcement Challenges

Enforcing anti-deceptive advertisement laws poses a number of challenges in India, the United States, and the United Kingdom. These challenges are due to accelerated digitalization, jurisdictional issues, and changing advertising trends.

- India: Enforcement Challenges

Digital Spread: The increasing use of digital advertising has brought a proliferation of false advertisements online. In 2024, the Advertising Standards Council of India (ASCI) said 85% of advertisements it reviewed were digital and only 75% of these complied with regulations, as against 97% compliance for television and print ads.

Regulatory Gaps: Strong laws such as the Consumer Protection Act, 2019 notwithstanding, enforcement are uneven. A study pointed out that although India has good provisions to

address unfair trade practices and misleading advertisements, enforcement is poor.

Judicial Backlogs: Congested courts and procedural delays impede timely redressal of consumer complaints against misleading advertisement.

- United States: Enforcement Challenges

Litigation Challenges: Pursuing false advertising through the courts can be expensive and time-consuming. Problems include being open to counterclaims and congested court lists, which can result in delaying the settlement of disputes.

Changing Advertising Practices: The fast-paced nature of advertising, particularly with the rise of social media and influencer marketing, makes it difficult to monitor and enforce compliance with advertising rules.

- United Kingdom: Enforcement Challenges

Influencer Marketing: The growth of influencer marketing has resulted in cases where endorsements are not obviously identified as advertisements, deceiving consumers. The UK's Financial Conduct Authority (FCA) has warned social media influencers to comply with advertising regulations, highlighting the importance of transparency.

Regulatory Coordination: Although Advertising Standards Authority (ASA) regulates advertising standards, enforcement processes could involve coordinating with other institutions such as the Competition and Markets Authority (CMA), which might cause delay in responding to misleading advertisements.

In short, although all three nations have created systems to tackle deceptive advertisements, enforcement issues still abound thanks to digital proliferation, legal issues, and the dynamic nature of advertising. To conquer these challenges, there is a need for ongoing reform of regulatory measures and increased inter-agency cooperation.

Related Case Laws

1. Indian Medical Association & Anr. v. Union of India & Ors. (Writ Petition (C) No. 645/2022)

In this case, the Supreme Court addressed concerns over misleading advertisements by Patanjali Ayurved, particularly regarding claims about curing COVID-19 with their product 'Coronil'. The Court mandated that all advertisers must submit a self-declaration certificate before releasing advertisements, aiming to curb the proliferation of misleading advertisements and ensure consumer protection. (Indian Medical Association & Anr. v. Union of India & Ors., 2024)

2. Havells India Ltd. & Anr. v. Amritanshu Khaitan & Ors. (Delhi High Court, 2015)

This case dealt with comparative advertising where Havells alleged that the defendants' advertisement was misleading and disparaging. The Delhi High Court held that while comparative advertising is permissible, it must not be misleading or disparaging. The Court emphasized that advertisements should not mislead consumers or discredit other products. (Havells India Ltd & Anr vs. Amritanshu Khaitan & Ors, 2015)

3. Horlicks Ltd. & Anr. v. Heinz India Pvt. Ltd. (Delhi High Court, 2018)

In this case, Horlicks challenged an advertisement by Heinz India, claiming it was misleading and disparaging. The Delhi High Court reiterated that while comparative advertising is allowed, it should not be misleading or disparaging. The Court restrained Heinz from airing the advertisement in its current form. (Horlicks Ltd. & Anr. v. Heinz India Pvt. Ltd., 2018)

4. Colgate-Palmolive (India) Ltd. v. Anchor Health & Beauty Care Pvt. Ltd. (Madras High Court)

Colgate-Palmolive filed a suit against Anchor for publishing advertisements that allegedly disparaged Colgate's

products. The Madras High Court held that while comparative advertising is permissible, it should not be misleading or disparaging. The Court granted an injunction restraining Anchor from publishing the impugned advertisements. (Colgate-Palmolive (India) Ltd. v. Anchor Health & Beauty Care Pvt. Ltd., 2003)

5. Brihans Natural Products Advertisement Complaints (2014 & 2017)

Brihans Natural Products faced complaints to the Advertising Standards Council of India (ASCI) regarding misleading advertisements for their products, including CleanComb and Greenleaf Pure Aloe Vera Skin Gel. The complaints alleged violations of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

(United States)

1. FTC v. Colgate-Palmolive Co., 380 U.S. 374 (1965)

The Supreme Court held that Colgate-Palmolive's use of deceptive demonstrations in advertisements violated the Federal Trade Commission Act. (FTC v. Colgate-Palmolive Co., 380 U.S. 374 (1965), 1965)

2. Jody Shackelford v. Morgan & Morgan (2024)

An Arkansas lawyer sued Morgan & Morgan for allegedly deceptive advertising practices that misled consumers and violated professional conduct rules. (Jody Shackelford v. Morgan & Morgan (2024), 2025)

(United Kingdom)

1. Wessex Water Advertisement Ban (2024)

The Advertising Standards Authority (ASA) banned Wessex Water's TV ad for omitting information about the company's sewage pollution record, deeming it misleading. (Ball v Wessex

Water Service Ltd(t/a Wessex Water), 2005)

2. Frank Reddaway Ltd v Banham [1896] AC 199

The House of Lords ruled that the use of the term "Camel Hair Belting" by a competitor constituted passing off, as the term had acquired a secondary meaning associated with the plaintiff's product. This case underscores the protection against misleading representations in product branding.

3. McDonald's Corp v Steel & Morris (1997) – "McLibel Case"

McDonald's sued two activists for distributing pamphlets criticizing the company's practices. The court found some claims to be libelous while others were upheld as true. The case highlighted the tension between freedom of expression and protection against misleading statements. (McDonald's Corp v Steel & Morris (1997), 2005)

4. Nike and Sky Advertisements (2024)

The ASA banned advertisements by Nike and Sky for employing "dark pattern" tactics. Nike's ad misrepresented a product's price, and Sky's Now TV ad failed to clearly disclose auto-renewal terms, both deemed misleading to consumers. (Badshah, 2024)

5. Aldi vs. Sainsbury's Price Comparison (2024)

The ASA upheld a complaint by Sainsbury's against Aldi, finding that Aldi's advertisement comparing Christmas dinner prices was misleading due to inadequate substantiation of the claim. (Davey, 2024)

Way Forward

To tackle the issues with enforcing laws against deceptive advertising, a multi-pronged approach is needed. The following are some recommendations to enhance consumer protection and promote truthful advertising practices:

Strengthen Regulatory Cooperation

India: Promote closer cooperation between the Central Consumer Protection Authority (CCPA) and self-regulatory agencies such as the Advertising Standards Council of India (ASCI) in order to coordinate enforcement action and exchange best practices.

United States: Encourage coordination between the Federal Trade Commission (FTC) and state-level consumer protection agencies to ensure consistent enforcement across jurisdictions.

United Kingdom: Promote collaborative efforts between the Advertising Standards Authority (ASA) and the Competition and Markets Authority (CMA) to deal with complex cases related to misleading advertising.

Leverage Technology for Monitoring

Automated Surveillance: Use AI-powered tools to monitor digital platforms for deceptive advertising practices, allowing for faster identification and response.

Data Analytics: Leverage big data analytics to identify patterns and trends in advertising that can point to large-scale misleading practices.

Enhance Legal Framework

Clear Definitions: Ensure laws provide clear definitions of what misleading advertising entails, including state-of-the-art ones like influencer marketing and native advertising.

Penalties: Implement tiered systems of penalties with steeper fines for repeat offenders to discourage habitual infringements.

Encourage Consumer Awareness

Education Campaigns: Organize public awareness campaigns to inform consumers about their rights and how to recognize and report deceptive ads.

Accessible Reporting Mechanisms: Create simple-to-use mechanisms for consumers to report deceptive advertisements, with speedy investigation and response.

Promote Ethical Advertising Practices

Industry Codes of Conduct: Urge industries to establish and follow codes of conduct focusing on honesty and openness in advertising.

Training Programs: Provide training for marketers and advertisers on legal requirements and ethical advertisement standards.

Through the adoption of such measures, regulators can establish a stronger framework for discouraging misleading advertisements and ensuring consumer protection to a greater extent.

Conclusion

In conclusion, deceptive advertising continues to be a thorn in the side of consumer protection in the face of prevailing regulatory structures in India, the United States, and the United Kingdom. The quick pace of development of digital marketing, the growth of endorsement via influencers, and the international scope of online spaces have overwhelmed traditional regulatory systems. Enforcement bodies frequently grapple with jurisdictional constraints, resource limitations, and sheer scale of content to keep abreast of.

In order to effectively fight against misleading advertising practices, there is a need for a multi-pronged approach. This involves revising and harmonizing the legal provisions to meet the new forms of advertising, increasing inter-agency and international collaboration, utilizing innovative technologies for monitoring and enforcement, and encouraging consumer education and awareness. Through the implementation of these measures, authorities can more effectively protect consumer interests and provide a fair and transparent market.

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