

MISLEADING ADVERTISEMENT AS AN UNFAIR TRADE PRACTICES: EXAMINING CONSUMER DECEPTION AND MARKET DISTORTION UNDER INDIAN LAW IN COMPETITION LAW

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BEST CITATION – RESHMA S, MISLEADING ADVERTISEMENT AS AN UNFAIR TRADE PRACTICES: EXAMINING CONSUMER DECEPTION AND MARKET DISTORTION UNDER INDIAN LAW IN COMPETITION LAW, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (6) OF 2026, PG. 169-180, APIS – 3920 – 0001 & ISSN – 2583-2344. DOI – <https://doi.org/10.65393/IJLRV6I619>

ABSTRACT:

The Competition Act, 2002 does not expressly regulate misleading advertising, despite the significant influence of advertising on competitive market outcomes. In practice, misleading advertisements are primarily addressed under consumer protection law, leaving their broader impact on market structure and competitive fairness largely unexamined. This article argues that misleading advertising, though not specifically recognised under the Competition Act, operates as an unfair trade practice when it distorts consumer choice, alters demand patterns, and grants artificial competitive advantages to enterprises engaging in deceptive conduct. Such practices may disadvantage honest competitors, raise barriers to entry, and contribute to an appreciable adverse effect on competition. By analysing the objectives and flexible enforcement framework of the Competition Act, 2002—particularly the effect-based approach under Sections 3 and 4 read with Section 19(3) the study highlights the regulatory gap in addressing misleading advertising from a competition law perspective. The article suggests that purposive interpretation or regulatory clarification is necessary to bring misleading advertising within the ambit of competition law, ensuring that deceptive commercial practices are addressed not only as consumer harms but also as distortions of competitive market processes in India.

Keywords: Misleading Advertising; Unfair Trade Practices; Competition Act, 2002; Market Distortion; Consumer Deception.

INTRODUCTION:

Advertising is a significant instrument of competition, enabling enterprises to communicate information, influence consumer preferences, and differentiate products in the marketplace. In competitive markets, truthful advertising facilitates informed consumer choice and promotes efficiency by allowing firms to compete on merit. However, when advertising becomes misleading, it disrupts the informational foundation of competition and alters market outcomes in a manner unrelated to product quality or performance. In the Indian

legal framework, misleading advertising has largely been addressed through consumer protection mechanisms aimed at preventing deception and providing remedies to affected consumers. While such regulation is essential, it focuses primarily on individual consumer harm and does not adequately address the broader competitive consequences of deceptive advertising practices. Misleading advertisements may distort demand, confer artificial competitive advantages, and place honest competitors at a disadvantage, thereby undermining competitive neutrality in the

market. The Competition Act, 2002 does not expressly recognise misleading advertising as an anti-competitive practice or as an unfair trade practice. Instead, the Act adopts an effect-based approach, prohibiting conduct that results in an appreciable adverse effect on competition or constitutes abuse of dominant position. This absence of an explicit provision has led to limited competition law scrutiny of misleading advertising, despite its potential to distort market structure and restrict effective competition. Against this background, this article examines misleading advertising as an unfair trade practice from a competition law perspective. It argues that, notwithstanding the legislative silence, misleading advertising can fall within the ambit of competition law due to its market-distorting effects and therefore warrants competitioncentric interpretation or regulatory clarification under the Competition Act, 2002.

BACKGROUND OF THE STUDY:

Advertising plays a decisive role in shaping competition by influencing consumer awareness and demand in modern markets. With the expansion of mass media and digital platforms, advertising has become a powerful competitive strategy capable of determining market success. However, the increasing prevalence of misleading advertising has raised concerns regarding its impact not only on consumers but also on competitive market structures. In India, regulatory responses to misleading advertising have traditionally been rooted in consumer protection law, focusing on preventing deception and providing corrective remedies. While such regulation addresses individual consumer harm, it does not adequately account for the competitive distortions created when enterprises use deceptive advertising to gain market advantage. Misleading claims may divert demand, marginalise honest competitors, and weaken competition by rewarding non-meritorious conduct. The Competition Act, 2002, which aims to preserve fair competition and market efficiency, does not explicitly address

misleading advertising. This regulatory silence creates a gap in competition law enforcement, despite the potential of misleading advertising to produce market-wide anti-competitive effects. Against this backdrop, the present study examines misleading advertising as an unfair trade practice from a competition law perspective, highlighting the need to address its broader impact on competitive markets in India.

STATEMENT OF THE STUDY:

The Competition Act, 2002 does not explicitly address misleading advertising, leaving a regulatory gap in addressing its competitive consequences. While consumer protection law tackles individual deception, it does not capture the broader market distortions caused by misleading advertisements, such as artificial competitive advantages, market foreclosure, and altered consumer choice. This study seeks to examine misleading advertising as an unfair trade practice under competition law, arguing that such conduct can have appreciable adverse effects on market competition despite the absence of a specific statutory provision. By analysing the potential of misleading advertising to distort competitive conditions, the study highlights the need for purposive interpretation or regulatory clarification under the Competition Act, 2002 to safeguard fair and effective competition in Indian markets.

SCOPE OF THE STUDY

This study focuses on misleading advertising as an unfair trade practice from the perspective of Indian competition law. It examines the **market-level consequences** of deceptive advertising, including distortion of consumer choice, creation of artificial competitive advantage, and exclusion of honest competitors. The study limits its analysis to the provisions of the **Competition Act, 2002**, particularly Sections 3 and 4, and considers the Act's effect-based framework for assessing anti-competitive conduct. While consumer protection law provides remedies for individual deception, this study emphasises the **broader impact on market structure and competition**.

The study does not address advertising ethics or marketing strategies in general but is confined to misleading advertising practices that may produce an **appreciable adverse effect on competition** in Indian markets.

OBJECTIVE OF THE STUDY:

1. To examine misleading advertising as an unfair trade practice under Indian competition law.
2. To analyse the **regulatory gap** in the Competition Act, 2002 regarding misleading advertising.
3. To evaluate the **impact of misleading advertising on market competition**, including consumer choice and competitors' position.
4. To explore how competition law can address **market distortions** caused by deceptive advertising.
5. To suggest the need for **purposive interpretation or regulatory clarification** to bring misleading advertising within the ambit of competition law.

RESEARCH QUESTIONS:

1. How does misleading advertising distort competitive conditions and consumer choice in Indian markets?
2. Why is misleading advertising not explicitly addressed under the Competition Act, 2002?
3. In what ways can misleading advertising confer artificial competitive advantages and harm honest competitors?
4. How can competition law intervene to regulate misleading advertising and prevent market distortions?
5. Should misleading advertising be recognised as an unfair trade practice under competition law, and if so, how?

RESEARCH PROPOSITIONS:

1. Misleading advertising can distort competition and confer unfair advantages.
2. The absence of explicit provisions in the Competition Act, 2002 creates a regulatory gap.
3. Misleading advertising may produce appreciable adverse effects on competition.
4. Recognition of misleading advertising as an unfair trade practice under competition law can safeguard market fairness.

REVIEW OF LITERATURE:

1. Misleading Advertising and Consumer Deception

Several scholars have examined misleading advertising in the context of consumer protection, emphasising how deceptive promotional practices distort consumer choice and lead to uninformed purchases. These studies generally highlight the harm to individual consumers but do not sufficiently analyse the structural impact on market competition.³⁵²

2. Regulatory Framework in India: Consumer Law Focus

A body of literature explores how the Consumer Protection Act, 2019 and earlier statutory regimes like the MRTP Act addressed unfair trade practices, including misleading advertisements. These works illustrate the evolution of consumer law remedies but also indicate that competition implications remain under explored.³⁵³

3. Competition Law and Market Distortion

Some academic contributions argue that misleading advertising can create artificial

³⁵² Dam Dibakar, Misleading Advertisement: A Critical Analysis with Reference to IMA v. Union of India, Indian Journal of Law & Legal Research (2025), <https://www.ijlr.com/post/misleading-advertisement-a-critical-analysis-with-referenceto-the-case-of-indian-medical-associati>

³⁵³ Consumer Protection Act, 2019, Consumer Protection Act, 2019

competitive advantages and impede fair competition, thereby producing an appreciable adverse effect on competition. These analyses, however, are largely doctrinal observations rather than full examinations of statutory frameworks.³⁵⁴

4. Comparative Perspectives on Misleading Advertising

Comparative legal scholarship, particularly from jurisdictions such as the United States and the European Union, shows that misleading commercial statements are actionable under competition or unfair competition law. Such studies underline the importance of integrating **misleading advertising within competition law discourse** rather than treating it solely as a consumer protection issue.³⁵⁵

RESEARCH GAP:

A review of existing literature reveals that most studies on misleading advertising in India focus primarily on consumer protection, examining how deceptive claims mislead buyers and affect individual transactions. While these contributions are valuable, they largely overlook the broader impact on market competition, such as the creation of artificial competitive advantages, distortion of demand patterns, and exclusion of honest competitors. Moreover, although the Competition Act, 2002 is designed to prevent anti-competitive practices and preserve fair market conditions, there is no explicit provision addressing misleading advertising. Indian scholarship has not sufficiently explored how such conduct could be interpreted as an unfair trade practice under competition law, nor provided a doctrinal framework to analyse its market-level effects. This study aims to fill this gap by examining misleading advertising from a competition law perspective, highlighting its regulatory implications and suggesting the need for purposive interpretation or clarification.

RESEARCH METHODOLOGY:

The study adopts a doctrinal research methodology, focusing on the analysis of statutes, regulations, and judicial pronouncements. It examines the Competition Act, 2002, the Consumer Protection Act, 2019, and relevant CCI orders and case law to evaluate the legal treatment of misleading advertising in India. Secondary sources, including academic articles, commentaries, and comparative studies, are also reviewed to understand how misleading advertising is addressed under Polish competition and consumer protection law. This qualitative approach allows for an analytical assessment of the regulatory gap in Indian competition law and the potential for recognising misleading advertising as an unfair trade practice. The study does not include empirical surveys but focuses on doctrinal interpretation to highlight the market-level distortions caused by deceptive advertising practices in India.

Conceptual Distinction Between Consumer Harm and Competitive Harm:

Misleading advertising has traditionally been examined through the lens of consumer harm, where the primary concern is deception, misinformation, and unfair influence on purchasing decisions.³⁵⁶ Consumer protection law focuses on correcting individual transactional injustice by providing remedies such as penalties or corrective measures.³⁵⁷ However, this perspective captures only the immediate and micro-level impact of misleading advertising, leaving its broader consequences on market competition largely unaddressed.³⁵⁸ In contrast, competitive harm arises when misleading advertising alters market dynamics by distorting consumer demand, influencing market structure, and granting artificial advantages to certain enterprises.³⁵⁹ Unlike consumer harm, which is

³⁵⁴ Ashok R. Patil, *Misleading Advertisements and Unfair Trade Practice in India: A Critical Case Analysis* (National Law School of India University Library, 2014), <https://opac.nls.ac.in/bib/35704>

³⁵⁵ Lanham Act s 43(a) (U.S.), https://en.wikipedia.org/wiki/Lanham_Act

³⁵⁶ Consumer Protection Act, No. 35 of 2019, S 2(28), INDIA CODE (2019).

³⁵⁷ Avtar Singh, *Law of Consumer Protection* 112–14 (Eastern Book Co. 2019).

³⁵⁸ Neeraj Dubey, *Misleading Advertisements and Competition Law: An Overlooked Interface*, 9 *NUJS L. Rev.* 245, 248–50 (2016).

³⁵⁹ OECD, *Consumer Policy and Competition: Misleading Advertising*, OECD Doc. DAF/COMP(2019)5, pp 12–16 (2019).

transactional in nature, competitive harm is structural and long-term, affecting entry conditions, rival positioning, and the overall intensity of competition.³⁶⁰

This distinction is significant in competition law analysis because consumer protection remedies are largely ex post, whereas competition law functions ex ante to prevent conduct likely to cause an appreciable adverse effect on competition.³⁶¹ Misleading advertising, therefore, must also be assessed through its impact on competitive neutrality and market structure rather than being confined solely to consumer deception.³⁶²

Misleading Advertising and Market Distortion

Misleading advertising refers to the dissemination of false, deceptive, or exaggerated claims that influence consumer decision-making.¹² While such practices are commonly examined from a consumer protection perspective, their impact extends beyond individual deception to **market-level distortion**. By artificially enhancing product appeal, misleading advertising can divert consumer demand, disrupt price signals, and provide **unwarranted competitive advantages** to certain enterprises.³⁶³ This results in the marginalisation of honest competitors who rely on truthful representation, thereby weakening competitive neutrality. In concentrated or emerging markets, deceptive advertising may further reinforce market power by influencing entry conditions and consumer loyalty. From a competition law perspective, such conduct has the potential to affect market structure and outcomes, thereby producing an **appreciable adverse effect on competition**. Consequently, misleading advertising cannot be viewed solely as a consumer wrong but must also be

assessed for its broader implications on market efficiency and fair competition.

Misleading Advertising as an Entry Barrier and Tool of Competitive Foreclosure

Misleading advertising, when examined through a competition law lens, functions not merely as a deceptive commercial practice but as a strategic tool capable of restricting market entry and foreclosing competition. In competitive markets, entry by new firms depends significantly on consumers' ability to compare products based on truthful information relating to price, quality, and performance. When dominant or resource-rich enterprises engage in misleading advertising, they manipulate consumer perception in a manner that artificially elevates their market position, thereby disadvantaging both existing rivals and potential entrants. This distortion alters competitive conditions by shifting market success away from efficiency and towards informational manipulation.³⁶⁴ From a structural standpoint, misleading advertising creates artificial entry barriers by increasing the costs faced by new entrants. New firms must not only compete on product quality and price but also overcome entrenched consumer misconceptions created through deceptive claims. This is particularly evident in markets characterised by brand loyalty, experience goods, or information asymmetry, such as pharmaceuticals, digital services, financial products, and fast-moving consumer goods. In such markets, misleading advertising strengthens incumbents' market power by shaping consumer expectations in ways that are difficult for new entrants to correct, even through truthful counter-advertising.³⁶⁵

Competition law recognises entry barriers as a central indicator of market power and competitive harm. While traditional entry barriers include economies of scale, access to essential facilities, or regulatory constraints,

³⁶⁰ Wouter P.J. Wils, The Relationship Between Competition Law and Consumer Protection Law, 34 *World Competition* 485, 489–92 (2011).

³⁶¹ Competition Act, No. 12 of 2002, §§ 18, 19(3), INDIA CODE (2002).

³⁶² Richard Whish & David Bailey, *Competition Law* 20–23 (9th ed. Oxford Univ. Press 2018) 12 Consumer Protection Act, No. 35 of 2019, s 2(28), INDIA CODE (2019).

³⁶³ Competition Act, No. 12 of 2002, S 3, 4, INDIA CODE (2002).

³⁶⁴ Richard Whish & David Bailey, *Competition Law* 214–16 (9th ed. Oxford Univ. Press 2018).

³⁶⁵ OECD, Consumer Policy and Competition: Misleading Advertising, OECD Doc. DAF/COMP(2019)5, 20–27 (2019).

behavioural barriers such as deceptive advertising are increasingly significant in modern markets. Misleading representations regarding product superiority, exclusivity, or technological advancement can foreclose competition by discouraging consumers from experimenting with alternative products. As a result, market shares become “sticky,” not because of superior performance but due to distorted consumer beliefs. This outcome undermines the competitive process and reduces long-term consumer welfare.³⁶⁶ In the Indian context, the Competition Act, 2002 does not explicitly conceptualise misleading advertising as an exclusionary practice. However, Section 4 prohibits abuse of dominant position where conduct results in denial of market access or imposition of unfair conditions. Misleading advertising by a dominant enterprise, when used to entrench market position or raise entry barriers, can fall within this prohibition. The difficulty lies not in doctrinal possibility but in enforcement orientation, as deceptive advertising is often viewed as peripheral to competition concerns rather than as a mechanism of foreclosure.³⁶⁷ The foreclosure effects of misleading advertising are not limited to dominance scenarios. Even in oligopolistic or highly concentrated markets, coordinated misleading advertising practices may reinforce market concentration by jointly shaping consumer perception and limiting effective competition. Where enterprises adopt similar deceptive strategies, competition shifts from product quality to marketing manipulation, reducing incentives for innovation and truthful disclosure. This collective distortion of market signals can result in appreciable adverse effects on competition under Section 3 of the Competition Act, particularly when such practices influence market outcomes and consumer choice.³⁶⁸

Comparative experience further strengthens this analysis. Jurisdictions that adopt a competition-centric view of misleading advertising recognise that exclusionary effects need not always be price-based. Non-price competition, including advertising and information dissemination, plays a decisive role in modern economies. When advertising becomes misleading, it transforms into a strategic barrier that restricts entry and weakens competitive constraints. The Polish enforcement framework, for instance, explicitly acknowledges that deceptive advertising can grant unfair competitive advantages and undermine market neutrality, thereby justifying competition authority intervention.³⁶⁹ Normatively, allowing misleading advertising to function as an entry barrier contradicts the core objective of competition law—to ensure that markets remain contestable and open to efficient competitors. If firms are permitted to secure market power through deception rather than innovation or efficiency, competition law risks legitimising market manipulation. Addressing misleading advertising as a foreclosure mechanism aligns enforcement with contemporary market realities, where informational control often substitutes traditional exclusionary tactics.

Therefore, recognising misleading advertising as an entry barrier provides a coherent doctrinal basis for integrating such conduct within competition law analysis. It reinforces the research proposition that deceptive advertising should be treated as an unfair trade practice with anticompetitive implications when it alters market structure, restricts entry, or forecloses competition. This approach does not expand competition law beyond its mandate but rather ensures that enforcement remains responsive to evolving forms of competitive harm.

Information Asymmetry and Its Role in Market Distortion

³⁶⁶ Eleanor M. Fox, Consumer Protection, Competition, and the Common Good, 73 *Antitrust L.J.* 345, 356–59 (2006).

³⁶⁷ Competition Act, No. 12 of 2002, S 4(2)(c), INDIA CODE (2002).

³⁶⁸ OECD, The Interface Between Competition and Consumer Policies, OECD Doc. DAF/COMP/GF(2008)10, 31–35 (2008).

³⁶⁹ Katarzyna Zalaszińska, Unfair Commercial Practices and Competition Law in Poland, 6 *Yearbook of Antitrust & Reg. Stud.* 85, 98–101 (2013).

Information asymmetry arises when one party to a market transaction possesses superior or misleading information compared to others, particularly consumers and rival firms. In competitive markets, accurate information enables consumers to make rational choices and allows firms to compete on merit. Misleading advertising disrupts this balance by deliberately distorting information regarding price, quality, or performance, thereby skewing consumer decision-making and weakening competitive discipline. Such distortion does not merely deceive individual consumers but alters demand patterns in a manner that disadvantages honest competitors.³⁷⁰

From a competition law perspective, information asymmetry created through misleading advertising can result in market distortion by reallocating market share on the basis of deception rather than efficiency. Firms engaging in deceptive claims may artificially enhance their competitive position, forcing rivals either to lose market access or engage in similar misleading conduct to survive. This leads to a “race to the bottom,” undermining fair competition and market transparency. Economic theory recognises that markets characterised by persistent information asymmetry tend to suffer from reduced competition, inefficient allocation of resources, and long-term consumer harm.³⁷¹

In the Indian context, while consumer protection law addresses deception at the transactional level, competition law remains largely silent on information asymmetry as a structural concern. However, the Competition Act, 2002, through its effect-based analysis of appreciable adverse effect on competition, provides sufficient scope to examine whether deceptive advertising practices systematically distort market conditions. Where information asymmetry is strategically employed to exclude competitors, raise entry barriers, or entrench market power,

such conduct assumes a competition dimension rather than remaining a mere consumer grievance.³⁷²

Recognising information asymmetry as a source of market distortion strengthens the argument that misleading advertising should be assessed through a competition law lens when it affects market structure and competitive neutrality. This approach aligns with comparative jurisdictions and supports the proposition that misleading advertising, when capable of altering competitive outcomes, constitutes an unfair trade practice with broader anticompetitive implications.

Interface Between the Consumer Protection Act, 2019 and the Competition Act, 2002:

The Consumer Protection Act, 2019 (CPA) and the Competition Act, 2002 operate in distinct yet overlapping regulatory spheres, both aiming to protect consumer welfare and ensure fair market practices. The CPA primarily addresses misleading advertisements as a form of unfair trade practice, focusing on individual consumer deception and providing remedial mechanisms such as corrective advertising, penalties, and endorsements liability.³⁷³ In contrast, the Competition Act is concerned with preserving market structure and preventing practices that cause an appreciable adverse effect on competition. The divergence in objectives results in different standards of assessment, remedies, and enforcement priorities.

While the CPA adopts a transactional approach by examining the impact of misleading advertisements on consumers, the Competition Act employs an effect-based framework that evaluates market-wide consequences such as foreclosure of competition, distortion of consumer choice, and creation of entry barriers. Misleading advertising that merely misinforms consumers may fall squarely within the CPA; however, when such advertising alters

³⁷⁰ George A. Akerlof, *The Market for “Lemons”: Quality Uncertainty and the Market Mechanism*, 84 *Q.J. Econ.* 488 (1970).

³⁷¹ OECD, *Consumer Policy and Competition: Misleading Advertising*, OECD Doc. DAF/COMP(2019)5, pp 12–18 (2019).

³⁷² Competition Act, No. 12 of 2002, §§ 3, 4, 19(3), INDIA CODE (2002); Wouter P.J. Wils, *The Relationship Between Competition Law and Consumer Protection Law*, 34 *World Competition* 485, 498–500 (2011).

³⁷³ Consumer Protection Act, No. 35 of 2019, SS 2(28), 21, INDIA CODE (2019).

competitive dynamics or grants unfair advantages to certain enterprises, it transcends consumer harm and enters the domain of competition law.³⁷⁴ This distinction underscores the need for regulatory coordination rather than compartmentalised enforcement.

The absence of an explicit provision addressing misleading advertising under the Competition Act has resulted in regulatory fragmentation, where competition authorities may hesitate to intervene, assuming the matter falls exclusively within consumer protection. Such an approach risks overlooking the structural impact of deceptive advertising on markets, particularly in sectors characterised by high information asymmetry and brand-driven competition. Consumer protection remedies, though effective in correcting deception, are inadequate to address market distortion or exclusionary effects on rival firms.³⁷⁵

A harmonised interpretation of both statutes is therefore necessary. Section 18 of the Competition Act mandates the Competition Commission of India to promote competition and protect consumer interests, indicating legislative intent to consider consumer welfare within a competitive framework. Misleading advertising that distorts market conditions should thus be evaluated under competition law where it produces appreciable adverse effects on competition, while the CPA may continue to address individual consumer harm. Such functional overlap ensures comprehensive regulation and strengthens market integrity.

Regulatory Gap in Indian Competition Law

The Indian legal framework addresses misleading advertising primarily under the **Consumer Protection Act,**

2019, which focuses on protecting consumers from deceptive commercial practices.³⁷⁶

³⁷⁴ OECD, The Interface Between Competition and Consumer Policies, OECD Doc. DAF/COMP/GF(2008)10, PP 19–24 (2008)

³⁷⁵ Neeraj Dubey, Misleading Advertisements and Competition Law: An Overlooked Interface, 9 *NUJS L. Rev.* 245, 260–63 (2016).

³⁷⁶ Consumer Protection Act, No. 35 of 2019, S 2(28), 21, INDIA CODE (2019).

However, the **Competition Act, 2002** does not contain any explicit provision dealing with misleading advertising as an anticompetitive conduct.³⁷⁷ This creates a regulatory gap where practices that distort competition may escape scrutiny if they do not fall squarely within traditional categories of anti-competitive agreements or abuse of dominance. Consumer protection remedies, though effective in addressing individual harm, are inadequate to tackle **market-wide distortions** and competitive disadvantages caused to rival firms.³⁷⁸ The absence of a competition-centric approach limits the ability of authorities to assess deceptive advertising through the lens of market structure, competitive fairness, and appreciable adverse effects on competition, thereby necessitating doctrinal reconsideration.³⁷⁹

Applicability of Sections 3 and 4 of the Competition Act, 2002:

Although the Competition Act, 2002 does not expressly regulate misleading advertising, such conduct may be examined under its **effect-based framework**.³⁸⁰ Section 3 may be attracted where misleading advertising forms part of coordinated conduct or agreements that distort competitive conditions and influence market outcomes.³⁸¹ Similarly, Section 4 becomes relevant when a **dominant enterprise** employs deceptive advertising strategies to strengthen market power, restrict consumer choice, or foreclose competition.³⁸² By misrepresenting product attributes or performance, dominant firms may raise entry barriers and undermine fair competition.³⁸³ The Competition Act's emphasis on **appreciable**

³⁷⁷ Neeraj Dubey, Misleading Advertisements and Competition Law: An Overlooked Interface, 9 *NUJS L. Rev.* 245, 252–53 (2016).

³⁷⁸ Ashok R. Patil, Misleading Advertisements and Unfair Trade Practices in India: A Legal Analysis, 4 *INDIAN J. L. & JUST.* 112, 118–20 (2015).

³⁷⁹ Wouter P.J. Wils, The Relationship Between Competition Law and Consumer Protection Law, 34 *WORLD COMPETITION* 485, 492–94 (2011).

³⁸⁰ Competition Act, No. 12 of 2002, pmbli., § 18, 3–4, INDIA CODE (2002).

³⁸¹ Competition Comm'n of India, *Fx Enterprise Solutions India Pvt. Ltd. v. Hyundai Motor India Ltd.*, Case No. 36 of 2014 (CCI June 14, 2017).

³⁸² Competition Comm'n of India, *MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd.*, Case No. 13 of 2009 (CCI June 23, 2011).

³⁸³ OECD, Consumer Policy and Competition: Misleading Advertising, OECD Doc. DAF/COMP(2019)5, pg 20–23 (2019).

adverse effect on competition allows for a purposive interpretation of these provisions.³⁸⁴ Therefore, misleading advertising, when shown to distort market structure or competitive processes, can be assessed within the existing statutory framework despite the absence of an explicit provision.³⁸⁵

Limitations of CCI Enforcement in Addressing Misleading Advertising:

The Competition Commission of India (CCI) plays a central role in enforcing the Competition Act, 2002, yet its institutional and statutory design limits its ability to effectively address misleading advertising as a form of market distortion. The CCI's enforcement framework is primarily structured around anti-competitive agreements and abuse of dominance, requiring a demonstrable appreciable adverse effect on competition. In the absence of an explicit statutory recognition of misleading advertising as anti-competitive conduct, the CCI has traditionally adopted a cautious approach, often declining jurisdiction where the conduct appears to involve consumer deception rather than competitive harm.³⁸⁶

A significant limitation arises from the evidentiary burden imposed on complainants. Establishing that misleading advertising has distorted market structure, foreclosed competition, or affected entry conditions requires complex economic analysis and market data, which is often unavailable or inaccessible to consumers and smaller competitors. As a result, deceptive advertising practices with cumulative or long-term anticompetitive effects may escape scrutiny due to difficulties in quantification and proof, despite their tangible impact on market fairness.³⁸⁷

Further, the CCI's enforcement priorities tend to focus on overt exclusionary practices such as

predatory pricing, refusal to deal, or cartelisation. Misleading advertising, being indirect and behavioural in nature, is frequently perceived as peripheral to competition law enforcement. This narrow interpretation overlooks the reality of modern markets, particularly digital and brand-driven sectors, where consumer perception and information manipulation play a decisive role in shaping competitive outcomes. The lack of sector-specific guidelines on deceptive conduct compounds this enforcement gap.³⁸⁸

Institutional fragmentation also constrains effective enforcement. The existence of parallel regulatory mechanisms under the Consumer Protection Act, 2019 often leads to jurisdictional ambiguity, resulting in deference rather than coordination between authorities. While consumer fora address individual grievances, the absence of structured cooperation mechanisms limits the CCI's capacity to intervene where misleading advertising produces systemic market distortion. These limitations underscore the need for doctrinal clarification and purposive interpretation to enable the CCI to address deceptive advertising practices that undermine competition.

Comparative Study with Poland

Poland adopts a dual regulatory approach by addressing misleading advertising under both **consumer protection and competition law**.³⁸⁹

The Polish **Act on Competition and Consumer Protection** empowers the Office of Competition and Consumer Protection (UOKiK) to intervene where deceptive advertising practices distort market competition or grant unfair advantages to certain enterprises.³⁹⁰ Misleading advertising is treated not merely as a consumer harm but as conduct capable of undermining competitive neutrality and market efficiency.³⁹¹

³⁸⁴ Competition Act, No. 12 of 2002, S 19(3), INDIA CODE (2002)

³⁸⁵ Neeraj Dubey, *Misleading Advertisements and Competition Law: An Overlooked Interface*, 9 NUJS L. REV. 245, 255–57 (2016).

³⁸⁶ Competition Act, No. 12 of 2002, §§ 3, 4, 19, INDIA CODE (2002); *Mabindra Elec. Mobility Ltd. v. CCI*, 2019 SCC OnLine Del 8032.

³⁸⁷ OECD, *Consumer Policy and Competition: Misleading Advertising*, OECD Doc. DAF/COMP(2019)5, PP 34–38 (2019).

³⁸⁸ Wouter P.J. Wils, *The Relationship Between Competition Law and Consumer Protection Law*, 34 *World Competition* 485, 503–06 (2011).

³⁸⁹ Act of 16 February 2007 on Competition and Consumer Protection (Pol.), arts. 1–2.

³⁹⁰ Id. art. 24; Office of Competition & Consumer Protection (UOKiK), *Competences of the President of UOKiK*, <https://www.uokik.gov.pl>

³⁹¹ OECD, *Consumer Policy and Competition: Misleading Advertising*, OECD Doc. DAF/COMP(2019)5, pg 18–22 (2019).

Polish jurisprudence emphasises the **effect of the conduct on competition**, particularly where false claims influence market access, consumer choice, or rival positioning.³⁹² This integrated framework enables authorities to address deceptive practices with broader market implications.³⁹³ A comparative assessment indicates that Poland's approach offers valuable insights for India, especially in recognising misleading advertising as a competition concern when it affects market structure and fair competition.³⁹⁴

Poland – Procedural Comparative Analysis:

Poland adopts an integrated procedural framework for addressing misleading advertising by combining consumer protection and competition law enforcement within a single institutional authority. The Office of Competition and Consumer Protection (UOKiK) is empowered to investigate and penalise deceptive commercial practices not only on the basis of consumer harm but also where such practices distort competitive conditions in the market. This unified enforcement structure enables procedural efficiency and reduces jurisdictional fragmentation, which often hinders effective intervention in jurisdictions with separate regulatory bodies.³⁹⁵

Procedurally, UOKiK may initiate proceedings ex officio upon detecting misleading advertising that affects market competition, without requiring proof of individual consumer loss. The assessment focuses on the impact of the conduct on market access, consumer choice, and the competitive position of rival enterprises. Where deceptive advertising confers an unfair advantage or alters competitive neutrality, UOKiK is authorised to impose administrative fines, order cessation of the practice, and

mandate corrective disclosures.³⁹⁶ This proactive enforcement model contrasts sharply with the Indian framework, where competition proceedings are largely complaint-driven and require extensive market effect analysis. Another notable procedural feature is the evidentiary standard applied by Polish authorities. Polish jurisprudence places emphasis on the likelihood of competitive distortion rather than requiring proof of actual harm. This forward-looking approach allows early intervention against deceptive practices capable of shaping market outcomes, particularly in concentrated or information-sensitive markets. Such procedural flexibility strengthens deterrence and prevents entrenchment of market power through misleading representations.³⁹⁷

The Polish model demonstrates that treating misleading advertising as a competition concern does not necessitate statutory overreach but can be achieved through purposive procedural design. The comparative analysis reveals that India's competition enforcement could benefit from adopting similar procedural mechanisms, such as ex officio investigations, lower evidentiary thresholds for information distortion, and structured coordination with consumer protection authorities. These measures would enable timely intervention against deceptive advertising practices that distort market structure and undermine fair competition.

Normative Justification for Treating Misleading Advertising as a Competition Concern:

From a normative perspective, competition law is not merely concerned with price effects or overt exclusionary conduct but with preserving the integrity of competitive processes. Markets function efficiently only when competition occurs on the basis of merit, including truthful

³⁹² Office of Competition & Consumer Protection (UOKiK), *Decisions on Misleading Commercial Practices*, Decision No. DOZIK-5/2019 (Pol).

³⁹³ Wouter P.J. Wils, *The Relationship Between Competition Law and Consumer Protection Law*, 34 *WORLD COMPETITION* 485, 493–95 (2011).

³⁹⁴ Katarzyna Zalasinska, *Unfair Commercial Practices and Competition Law in Poland*, 6 *Y.B. ANTITRUST & REG. STUD.* 85, 92–95 (2013).

³⁹⁵ Act of 16 February 2007 on Competition and Consumer Protection (Poland), *Journal of Laws* 2007 No. 50, item 331; UOKiK, *Annual Report 2021*, at 12–15.

³⁹⁶ Id. arts. 24–26; OECD, *Consumer Policy and Competition: Misleading Advertising*, OECD Doc. DAF/COMP(2019)5, PP 45–48 (2019).

³⁹⁷ Katarzyna Zalasinska, *Unfair Commercial Practices and Competition Law in Poland*, 6 *Yearbook of Antitrust and Regulatory Studies* 85, 92–95 (2013).

information, product quality, and innovation. Misleading advertising undermines this foundational premise by distorting consumer perception and reallocating market advantages through deception rather than efficiency. Allowing such conduct to remain outside competition scrutiny contradicts the normative objectives of competition law, particularly the promotion of fair competition and consumer welfare.³⁹⁸ Normatively, consumer welfare cannot be confined to short-term price considerations alone. Deceptive advertising practices may generate immediate consumer attraction while causing long-term harm by entrenching inefficient firms, discouraging market entry, and reducing incentives for truthful competition. Economic theory recognises that sustained information distortion weakens market discipline and leads to allocative inefficiency. Competition law, therefore, must intervene where misleading advertising systematically affects market outcomes, even in the absence of classical dominance or cartel behaviour.³⁹⁹ Further, normative consistency demands coherence between consumer protection and competition law frameworks. While consumer protection law remedies individual deception, competition law is normatively justified in addressing broader structural harms that arise from unfair competitive advantages. Treating misleading advertising solely as a consumer issue fragments enforcement and fails to account for cumulative market-wide effects. A competition-centric approach ensures that enterprises compete on legitimate parameters, thereby preserving competitive neutrality and market confidence.⁴⁰⁰

Comparative normative analysis reinforces this justification. Jurisdictions such as Poland recognise that deceptive commercial practices offend not only consumer rights but also the

moral foundations of fair competition. Aligning Indian competition law with such normative standards would enhance institutional legitimacy and reinforce trust in market regulation. Ultimately, recognising misleading advertising as a competition concern accords with the normative purpose of competition law—to ensure that markets reward merit rather than manipulation.

Implications for Competition Law in India:

Recognising misleading advertising as a competition concern would strengthen the effectiveness of Indian competition law in addressing market distortions.⁴⁰¹ A purposive interpretation of **Sections 3 and 4 of the Competition Act, 2002** could allow competition authorities to assess deceptive advertising based on its impact on market structure and competitive processes.⁴⁰² Such an approach would complement consumer protection mechanisms by addressing harms that extend beyond individual deception to affect rival enterprises and market efficiency. Integrating competition law scrutiny would also deter enterprises from gaining unfair advantages through misleading claims. Aligning Indian practice with comparative frameworks, such as that of Poland, would promote **competitive neutrality** and ensure that market outcomes are determined by merit rather than deceptive conduct.⁴⁰³

Conclusion:

Misleading advertising, though traditionally addressed under consumer protection law, has significant implications for market competition and fairness. By distorting consumer choice and conferring artificial advantages on certain enterprises, such practices can undermine competitive neutrality and market efficiency. The absence of an explicit provision on misleading advertising under the Competition Act, 2002 reveals a regulatory gap in addressing

³⁹⁸ Richard Whish & David Bailey, *Competition Law* 20–22 (9th ed. Oxford Univ. Press 2018).

³⁹⁹ George A. Akerlof, The Market for “Lemons”: Quality Uncertainty and the Market Mechanism, 84 *Q.J. Econ.* 488, 489–92 (1970).

⁴⁰⁰ Eleanor M. Fox, Consumer Protection, Competition, and the Common Good, 73 *Antitrust L.J.* 345, 352–55 (2006).

⁴⁰¹ Competition Act, No. 12 of 2002, s 18, INDIA CODE (2002).

⁴⁰² Competition Act, No. 12 of 2002, s 3, 4, 19(3), INDIA CODE (2002).

⁴⁰³ Act of 16 February 2007 on Competition and Consumer Protection (Pol.), art. 24; Katarzyna Zalasinska, *Unfair Commercial Practices and Competition Law in Poland*, 6 Y.B. ANTITRUST & REG. STUD. 85, 94–96 (2013).

market-level distortions. Through doctrinal and comparative analysis with Polish law, this study demonstrates the need for a competition-centric approach. Recognising misleading advertising as an unfair trade practice within competition law would strengthen enforcement mechanisms and promote fair and efficient markets in India.

SUGGESTIONS AND RECOMMENDATIONS:

It is recommended that misleading advertising be expressly recognised as a form of unfair trade practice under competition law when it produces market-wide distortions. The Competition Commission of India may adopt a purposive and effect-based interpretation of Sections 3 and 4 of the Competition Act, 2002 to assess deceptive advertising practices that adversely affect competition. Legislative clarification or interpretative guidelines could further strengthen enforcement. Enhanced coordination between competition and consumer protection authorities would ensure comprehensive regulation of misleading advertising while preserving competitive neutrality and market efficiency.

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