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Advertising Deception and Consumer Protection

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This article addresses the use of covert advertising in influencing the mind of consumers and prevailing legal concerns related to it. It reviews the enactment of the Consumer Protection Act, 2019¹. The introduction of this act was necessary as it treats problems suffered by the new-age or trendy buyers and the booming home shopping practice and protects consumers from false and misleading advertisements. It talks about the forms of deception. The article also provides the role of the advertisement watchdog 'Advertisement Standards Council of India'(ASIC) in checking deceptive marketing practices. There are also some touches on the implementation of different laws on advertising with the advent of time and overall analysis on the legal perspective of advertising.

Keywords: *advertisement, consumers, deception, false, legal, misleading.*

INTRODUCTION

“Advertising is legalized lying”

- H. G. Wells

¹ Consumer Protection Act 2019

Today, advertisements have assumed control over all parts of one's life. From cookies to cosmetic items, from hospitals to health drinks, companies are putting intensely cash in marketing their products. The recent few years have experienced a development that is extraordinary advertising like influencer promoting, actors, stars and content creators with a huge fan following on social networks tend to be joining into paid collaborations to assist the brands in their particular goods or services marketing drives. When you look at the lack of any label/disclaimer associated with their marketing posts consumers are oftentimes not able to differentiate from sponsored online posts on social media platforms and radical ones. Not having proper authentication and clear transparency has led to a growth in misleading advertising behavior consumers that are impacting adversely. With the growth in time, digital ads which currently had a crucial part in shaping the business have grown to be more crucial. Online advertising became an important business driver in the online world economy as numerous websites and services had been financed because of these advertisements. Because of the competitiveness of the marketplace and vulnerability of customers, misleading advertisements can exposure Goodwill manifold.

The Committee on Consumer Policy (CCP) is working on customer dilemmas and challenges as a result of online advertising. The CCP reports on online advertising advantages, but, lots of potential consumer disadvantages and problems from web marketing, including false and deceptive claims; misleadingly formatted commercials, which make it burdensome for consumers to determine some adverts as such threats from “malvertising”; and data privacy and security problems relating to enhanced data collection. It also describes possible dilemmas concerning marketing and advertising that are web consumer biases and weaknesses.

BACKGROUND

In the modern world of business, it is useless to be a creative, original thinker unless you can also sell what you create- said famous advertising tycoon David Mackenzie Ogilvy. We all know how powerful and influential a tool is an advertisement in persuading any consumer to buy any product or service. There are various means of advertisement. In the pre-internet era, the means were a newspaper, radio, television, or outdoor billboards. But later in 1990, the

Internet means grabbed an organization's eyes. To introduce and sell the idea of their products now companies started looking to draw the force of the Internet so that they can easily connect with their customers and advance their items and services. It is usually acknowledged that online publicizing began when the first commercial online magazine HotWired was launched in 1994 and it offered a flag promotion to AT&T company and showed the advertisement on its website page for the first time. It has gained extraordinary headway from that point forward. All through the previous decade, online advertising supported its expansion. It was projected that online advertising was to outperform TV revenues. It turned into a key financial driver in the online economy, by subsidizing numerous sites and services too. In the present time, we all need to see online advertising if we want to surf the internet. As the assortment and crowd of internet advertising expanded, distinctive legal issues emerged and the need to set a lawful structure for this space unavoidably arose. As of now, in India, there is no central statutory agency that can manage the advertising market and have uniform enactment. The advertising industry is managed in India through a non-statutory body known as the Advertising Standards Council of India (ASCI).

ADVERTISEMENT STANDARDS COUNCIL OF INDIA (ASCI)

The Advertisement Standards Council of India (hereinafter, "ASCI") ended up being created in 1985 under Section 25 of the Companies Act, 1956². It was thought of as a "voluntary, self-regulatory council" which was incorporated as a non-profit company. The most prominent mission concerning the ASCI is always to market truthfulness, reliability, community decency, societal rules also to expose unsafe goods and commodities. The goals regarding the ASCI consist of "monitor, promote and control" measures concerning advertising methods within the state.

The ASCI unit comprises a Board of Governors, a Secretariat, and members of the Consumer Complaints Council. A self-regulating code is being adopted by ASCI in its inscription to facilitate the concerns connected with consumers. Despite holding the status of the non-statutory body this self-regulating code has been admitted under various Indian laws. The

² Companies Act 1956, s 25

ASCI likewise draws grievances from consumers facing any such unjust, false, and deceptive advertising.

DECEPTIVE ADVERTISING

Advertisements raise consumer knowledge about a product and fit information so that consumers will make versed choices. Oftentimes, nevertheless, marketing techniques are concentrated more on increasing product sales than giving the right and exact information about a particular product. The deception is considered to occur if the ad (or advertising) departs the buyer or shopper by having a different view or understanding than exactly what was previously it is expected if the buyer has reasonable information, and that the viewpoint and/or belief is untrue or likely deceptive. False and misleading advertisements are of various sorts.

KINDS OF DECEPTION

1. Bait and Switch

It is a kind of deception that takes place when an ongoing business or company gives an advertisement of any product it never means to render. Let's understand with an example- Mallya's electronic shop advertises headphones at a strangely low cost while stating that stock is "limited". At the time when buyers get to the shop and asked for the headphone that they have seen in the advertisement, they get informed that the advertised model is out of stock and tends to be presented with higher-priced headphones rather.

2. Misleading Graphics or Photos

To make any item or product look highly attractive than it is in real companies often added photos or graphics. For instance, food houses occasionally use various photo editors to boost the looks that are in actual items to make sure viewers must like them and buy them.

3. Manipulation of Terms

There are several terms or words which doesn't have a precise meaning. With regards to the place, "organic" food may not possess a definite legal meaning this is certainly appropriate, and "light" food remained variously used to imply less percentage in carbohydrates, calories, sugars, sodium, etc., and sometimes also light in color. Descriptions like "all-natural" are often used but in a legal mind, they are meaningless.

4. Price Deceit

This kind of deception is being done by making use of false pricing in the advertisements of any product or service. For example, a bicycle showroom might market that a bicycle is on sale at almost fifty percent price whenever the advertised bicycle had been never traded at a greater price to start with.

5. Comparison Inconsistencies

This includes comparing a product to only the competitors it can beat. These inconsistencies occur when an ad analyzes or compares one business item to a contender's just in places where it's more agreeable, leaving out the well-established reality the other item is predominant in different alternate manners. In this manner, one organization acquires advertising that is deceitful over others.

5. False Claims

This happens when a business makes unsustainable promises that its product will give particular gain or benefit to the people who use it but those promises are false and have never been approved.

ILLUSTRATIONS

Red Bull - Caffeinated beverage company *Red Bull* was sued in 2014 for its tagline "Red Bull gives you wings". Later the company had to settle the matter by consenting to pay out a maximum of \$13 million – including \$10 to each US buyer who had purchased the beverage

since 2002 because the class action lawsuit had brought against it for making unsustainable claims.

Fair and Lovely - In this exemplary promotion, a one-two punch of sexism and fair complexion inclination: An old and retired father with cash issues regrets that he didn't have a son to relieve him. His darker-looking girl chooses she'll "be that son and applies a Fair and Lovely (owned by Unilever India) to find the desired job as an airline hostess.

LEGAL FRAMEWORK FOR DECEPTIVE ADVERTISING IN INDIA

Over a timespan, with the increase in competition, some adverts began misleading and misguiding the viewers, for much better acceptability and sale of the products. To manage and control these misleading adverts various legislations were constituted, such as The Drugs and Magic Remedies Objectionable Advertisements Act, 1954³. But, this Act had been very old compared with advertisements that are misleading, and some other problems that existed. The law even didn't propose substantial fines or imprisonment.

The Monopolies and Restrictive Trade Practices Act, 1969⁴ based on which furnishing any false information of goods or services had been regarded as "unfair trade practices". The Consumer Protection Act, 1986 given that any description that is untrue of goods or services may be addressed as unfair trade practices. The Cable Television Network Regulation Act and Rule, 1995 was not able to provide any enforcing agency. The Food Safety and Standards Act, 2006 pointed out what will consider misleading advertisements but would not mention corrective advertisements. Notwithstanding all the acts that are mentioned above, not a single of them discussed deterrents or fines that can be charged on makers or the promoters of those commercials which are misleading the consumers.

Therefore, a need is seriously felt to introduce The Consumer Protection Act, 2019. This new act carries some reassurance for consumers while replacing an almost thirty years old Consumer Protection Act, 1986.

³ Drugs and Magic Remedies Objectionable Advertisements Act 1954

⁴ Monopolies and Restrictive Trade Practices Act 1969

CONSUMER PROTECTION ACT, 2019 PROVISIONS ON MISLEADING ADVERTISEMENTS

The Consumer Protection Act, 2019⁵ (CPA, 2019) came into force on July 20, 2020, and superseded the outdated Consumer Protection Act, 1986⁶. CPA, 2019 extends the definition of 'consumer' which is mentioned in *section 2(27)*⁷ which provides- any person who buys any goods for consideration or hires or avails any services for consideration and this expression also includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing. This act covers E-commerce which was not covered in the prior act. With the commencement of CPA, 2019 now deceived consumers can file E-complaints against any misleading ads, and the aggrieved parties can be heard and examined through video conferencing. Provisions like the definition of the misleading advertisements got included in this act along with So many extra provisions like the formation of the Central Consumer Protection Authority under Chapter III, Consumer Disputes Redressal Commission under Chapter IV, Enhancement of Pecuniary Jurisdiction, etc.

*Section 2(28)*⁸ of CPA, 2019 defines misleading advertisements as any advertisement in relation to any product or service which:

- i. Falsely describes such product or services or
- ii. It gives a false guarantee to or is likely to mislead the consumers as to the nature, substance, quantity, or quality of such product or services or
- iii. It conveys an express or implied representation which, if made by the manufacturer or seller or services provider thereof, would constitute an unfair trade practice or
- iv. Deliberately conceals important information.

The CPA, 2019 has also provided the penal provision under which the Central Consumer Protection Authority may impose a penalty of up to INR 1,000,000 on a manufacturer or an endorser, for a false or misleading advertisement. The CCPA may also sentence them to

⁵ CPA 2019 (n 1)

⁶ *Ibid*

⁷ CPA 2019 (n 1), s 27

⁸ CPA 2019 (n 1), s 28

imprisonment for up to two years for the same. The act also fixes liability on celebrity endorsers to check the credibility of the product by ensuring that the claims made in the advertisement related to that product should not be false.

Section 10⁹ of CPA, 2019 has instituted the Central Consumer Protection Authority to be known as the Central Authority to regulate matters relating to violation of rights of consumers, unfair trade practices, and false or misleading advertisements. The Central Authority has an investigation unit that can inquire or investigate the matters relating to the violation of consumer rights. The new act, 2019 under chapter V has also established the Consumer Mediation Cell as a part of Alternative dispute Resolution by which now the manner of dispute resolution can become easier and faster.

CONCLUSION

The advertising industry of our country has moved from being a small-scale business to a full-fledged industry. As indicated by a Goldman Sachs report, the advanced advertising profession scope in the Indian market will be valued at \$160B by 2025. With the advent of time and advancement in technology now advertisers and marketers can connect to customers from anywhere with text, video, and audio. There are numerous means in which advertising can be done today. However, the laws overseeing these ads are in a very early stage. Though Right to Advertisement is one of the essential features of carrying any business, profession, or any other organization in today's world, it is also necessary to see that these fancy advertisements of thousand types of products by different companies also affecting the buyer's opinion of a good or service. On acknowledging the fact that motivated by economic motives, companies oftentimes lead to misleading the public by their deceptive advertising. However, the commencement of the new consumer protection act, 2019 is a desirable mark for the consumers that facilitates the concerns and interests them. There is a need to make stability between rendering a competitive environment, and consumer protection to maintain a fair business environment.

⁹ CPA 2019 (n 1), s 10