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Advertisement Regulation in India: A Right Step in the Right Direction?

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Supervision is considered the most indispensable part of human life. It is impossible to imagine a life without any supervision in almost every field and the advertisement industry is not any different. The advertisement industry has a huge impact on a normal consumer's life concerning his habits, lifestyle etc., and can also mislead one to a large extent, using surrogate ads, celebrity endorsement, baits, and the like. With the onset of digital media, the need for genuine regulation has also been enhanced. To supervise the advertisement industry the birth Advertisement Standard Council of India (ASCI) took place but was not provided with any remote to supervise it. The article also sheds light on the regulations adopted by foreign countries like the United States, and Italy where the control is enforced through the principle of self-regulation. In end, a conclusion is provided concerning what needs to be done like extensive debates among the general public, more jurisdiction for ASCI, and learnings from other countries.

Keywords: *supervision, asci, self-regulation, celebrity, advertisement industry.*

INTRODUCTION

The era of the 21st century will be known for deep, advancing, and rapid changes happening in society and have made advertisement a very crucial and indispensable part of human life. Effective advertisements are seen as one of the most important drivers of the advancing economy and globalisation happening in society. Advertisements tend to play a crucial role in

shaping sentiments toward a particular product and service in the minds of its consumers and inducing the consumer to buy the product. Effective taglines like “*mentos, dimaag ki batti Chala de*”, and “*Denver! the scent of my success*” leave an impeccable mark in the minds of the consumer, attracting the consumer towards the product.

India has been making large strides in the advertisement industry and has been one of the **fastest-growing advertising industries**, recording just under 750 billion Indian rupees in revenues in 2021, indicating a speedy recovery since the pandemic. A high share of television ownership across the country made it the **leading source of revenue for ads**.¹ The bigger the market, the more the number of problems arise that need to be immediately addressed.

The advertisement industries have also witnessed a major change over the years. It has moved from the age where advertisements were majorly used to in the printed form i.e in magazines, newspapers, and the like. Nowadays, advertisements are majorly seen in the digital form where large attractive, colourful videos are shown to the consumers. With the advent of COVID-19, digital media has also witnessed a mammoth change. The deadly COVID-19 compelled people to resort to home leading to an increase in the number of daily users of television, Over the top platforms automatically leading to an increase in the consumption of advertisements. The internet reaching many new homes automatically placed consumers in front of their mobiles and spending countless hours on their devices.

NEED FOR REGULATION

Having taken into consideration modernisation, globalisation, and the changing realms in the advertising industry, there is a dire need to address the growing complexities in the advertising industry. The need is further felt given the fact that many advertisements are misleading consumers to buy a particular product. The problems became much more intense with the onset of digital media with new advertisement strategies being adopted by different companies to lure customers to buy their products. According to the TAM (Total Addressable Market) Agency

¹ Basuroy T, 'India: Advertising Revenue by Medium 2021' (*Statista*, 13 July 2022)

<<https://www.statista.com/statistics/233501/advertising-revenue-in-india-by-type/>> accessed 18 January 2023

report on TV advertising, as the number of advertisements for personal care, healthcare, and hygiene products grew, the number of complaints concerning misleading advertisements also grew as directly.² During COVID-19, when the whole world was threatened by the disease, the national company Patanjali issued an advertisement for launching its own COVID cure medicine- Coronil, which they claimed to be 100% effective with no backing. This came at a time when people were dreaming of an antidote to COVID-19 and the people could easily fall into their traps and buy the product.

According to the ASCI (Advertising Standards Council of India) Complaint Analysis Report of 2021-22, almost 94% of the advertisement complaints received across various media platforms needed amendments. Advertisements featuring celebrities saw a 41% rise in complaints and with digital media taking the central stage, new categories like crypto assets came into the top five violative categories.³

One point which needs a lot of attention is the advertisement for children. Children are considered to be the most vulnerable section of society to be manipulated. The advertisements with the help of bright colours, songs, and trending lifestyles persuade the children towards various harmful things like junk food, and mobile games and the advertisements depicting violence harm the children both physically and mentally. There is a common concern among parents that harmful advertisements are spoiling the bright future of their children by making them lazy, addicted to harmful substances, and much prone to violence.

Global consumer goods giant Hindustan Unilever (HUL) was proven guilty by a high-powered body under the ministry of health for making flawed and deceptive claims about its malted beverage “Kissan Amaze”.⁴ The company claims the beverage lay out more than 30% of essential

² Jalan, ‘Consumption of Fake Information Is Injurious to Health: Progressive Steps towards AD Regulation in India’ (*Live Law*, 24 November 2022) <https://www.livelaw.in/law-firms/deals/fake-information-ad-regulation-tam-agency-tv-advertising-asci-complaint-analysis-report-high-court-of-delhi-sebi-nft-coindcx-coinswitch-kuber-consumer-protection-act-2019-asci-indian-society-of-advertisers-gsl-chambers-214815#_ftn1> accessed 18 January 2023

³ *Ibid*

⁴ Vadehra S, ‘Advertising to Children in India’ (2010) 11 *Young Consumers* 1

brain nutrients recommended for kids daily. Moreover, there is no specific statutory law concerning advertisements to children and there is very less accountability for these companies.

SURROGATE ADVERTISEMENTS

Another thing that is creating havoc in society is the use of surrogate advertisements. These are those advertisements that are not permissible to be advertised but still are advertised by camouflaging these advertisements by advertising a very similar product which is permissible. The government has banned the advertisement of tobacco products under The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act, 2003. But the Companies like Vimal with the help of surrogate advertising advertise products similar to *paan* masala with the same design and try to depict *paan* masala as much as possible. Indirectly, they are trying to advertise *paan* masala only.

This advertising is a lot harmful to any country as with the help of some loopholes in the system the advertisement companies are trying to take advantage of it and misleading the people with dangerous products. The products must contain a proper disclosure of the contents and other important indicators clearly like hallmark, ISI, and the like. The above-mentioned companies generally tend to hide the main content and sell out their main product in that particular name.

According to the ASCI guidelines, a company must use clear, legible font when it is superimposing disclosure labels. Moreover, the disclosure must not be concealed under a series of hashtags or anything else and the consumer doesn't need to search for the contents.⁵ To protect the interest of the consumer the disclosure must be easy to get in the form of images, and symbols so that the consumer doesn't need to read more.

CELEBRITY ENDORSEMENTS

India is generally considered a country where celebrities are treated as a gift of god on Earth. There are considered as another version of God. Large looms of crowds generally follow them

⁵ 'Guidelines For Influencer in Digital Media' (ASCI.Social) <<https://asci.social/guidelines>> accessed 20 January 2023

in every path of their life. They are considered to have a big impact on a normal person's life and people without any hesitation follow them blindly.

Celebrities around the globe make a lump sum amount of money endorsing various brands without even thinking about the impact of the product on the globe. Over the last few years, there has been a greater tendency among various companies to use celebrities to endorse their brands. It completely acts as a bonus for the companies as the viewer gets distracted by the celebrity in the advertisement rather than focusing on the contents, price, and effectiveness of the product. The minds of the consumer are brainwashed by the celebrities creating a form of undue influence on the consumers.

These endorsements sometimes have a big impact on the minds of consumers. The best example could be just Elon Musk's simple tweet on December 20, 2020, "One word, doge"⁶ instantly led to a quick surge of 20% in its price and landed it on the trending list on Twitter. Studies by ASCI point out that out of 10 people, 8 of them are studying advertisements. People without giving much consideration tend to buy the products by showing their faith in celebrities.

Another issue was raised in *HT Media Ltd. v UTV News Ltd. & Anr.*⁷ where further Australian Federal Court was cited that if an advertisement had acquired special significance, then the adoption of elements of the advertisement by another trader may give rise to a claim of misrepresentation. In that instant case, the Court found that the essential elements of Mortein's advertisements, which were the use of the celebrity as the presenter and its catch-line, had been substantially copied in the defendant's advertisement. The Court concluded that the main intention of the appellant was not to portray its product as the claimant's but to use elements of the claimant's commercial to cause the public to transfer its loyalty and thereby damage the claimant's business and goodwill to the advantage of the defendant's business.

Recently, a new trend of using social media influences rather than traditional celebrity endorsers is gaining rapidly. Business Insider UK predicts that 'influencer marketing ad spend is poised

⁶ *Ibid*

⁷ *HT Media Ltd v UTV News Ltd* (2010) 4 CHN 891 (Cal)

to reach between \$5 billion and \$10 billion in 2022'.⁸ This influencer marketing has led to the emergence of new problems. The common people are usually under the illusion that these influencers are using the products themselves which is the incorrect fact that they are getting paid for endorsing their products. In addition to that companies have now started to provide discounts to the consumer by using a particular influencer's coupon code or posting about them on different social media platforms giving the consumer a natural tendency to use a discounted product. This leads to the problem that the consumers are not buying the products based on the authenticity of the products but rather falling on the bait by the influencers.

JURISDICTION OF ASCI

India doesn't have a single comprehensive legislation to regulate advertisements. To control it, advertisement companies formulated a self-regulatory council known as the Advertising Standards Council of India (ASCI) in 1985, which issued a "Code for self-regulation of advertising content in India". Advertisement Standard Council of India is a statutory or regulatory body incorporated under Section 25 of the Companies Act, 1956. Lack of backing by any government statute restrains the officials to work at a full strength. In addition to that one cannot but get the very distinct impression that the ASCI considers itself not only to be above the law but a law unto itself. It also seems to have the most tenuous grasp of fundamental legal principles, including (but not limited to) the concept of *ex parte* hearings, what the rules of natural justice mean, and why they are described as "fundamental".⁹

The ASCI is not at liberty to issue any orders or any decisions on any complaint brought to it without affording the other party a fair opportunity of being heard. That includes serving the other party with a copy of the complaint. Without statutory backing, its decisions are not binding unless the party in question submits them. A similar stance has been taken by the Bombay HC in which it has been held that the ASCI cannot assume the authority of a civil court.

⁸ Kevin Gallagher, 'The Influencer Marketing Report: Research, Strategy & Platforms for Leveraging Social Media Influencers' (*Business Insider UK*, 24 September 2018) <<http://uk.businessinsider.com/the-influencer-marketing-report-2018-1?r=US&IR=T>> accessed 30 March 2020

⁹ *Teleshop teleshopping v Advertisement Standard Council of India* (2015) SCC OnLine Bom 8777

It was reiterated in this case that the ASCI machinery was only intended to "complement the legal controls," not to replace them.¹⁰

So, in toto, the foremost jurisdiction of ASCI can be said to just act as a suggestive body to the complaints rather than taking coercive steps against the wrongdoer. The ASCI must be granted a clear and proper authority to deal with the complaints along with a governmental statute. A complete independent jurisdiction, to adjudicate the disputes and reward suitable damages to the wrongdoer. Glancing at the advertisement laws of other nations, numerous advertising challenges are avoided by careful internal review. Advertising in the US, Belgium, Ireland, Italy, Switzerland, and the like is enforced through industry self-regulation, government regulation, or private lawsuits (most commonly by competitors, but sometimes by consumers or consumer organizations).¹¹ This self-regulation calls for a social responsibility toward others and where every person is keeping an eye on others' actions.

GUIDELINES & REGULATIONS

Although much has not been done in the field of the advertisement industry in India, there are still some inadequate and obsolete laws running the advertisement industry. The Consumer Protection Act, 2019 lays down under Section 18-21 lays down the conditions for violations and the retributive measures which need to be followed during the registration of a complaint. It tries to protect the consumer from unfair trade practices, prevention from false & misleading advertisements, and may suggest discontinuation of the product or reimbursement of the price of the product if found to violate the terms & conditions. To strengthen the control over the unfair use of advertisements, more detailed laws, defining every category and different punishments for different acts, so that detailed and simplified means could be made to ease the working.

In addition to that, The Competition Act, of 2002 has also made some provisions to protect consumers against "unfair trade practices". The Antitrust law prohibits the making of any

¹⁰ *Century Plyboards (India) Ltd v Advertisement Standard Council of India* (1999) SCC OnLine Bom 444

¹¹ Petty RD, 'Advertising Law in the United States and European Union - JSTOR' (*JStor*)

<<https://www.jstor.org/stable/30000417>> accessed 22 January 2023

representation to the public which is false or misleading in a "material respect". An unfair trade practice is defined as the practice of promoting the sale, use, or supply of any goods or services using an "unfair method" or "unfair deceptive practice. But the main problem associated with this law is that it just acts as a suggestive body rather than using retributive force so that it could act as a detrimental factor in the minds of people.

CONCLUSION

A lot of cumulative effort needs to be done by the government and advertisement industry to regulate their business to prevent unfairness and misuse of their power. Advertisement is a very responsible business and they should take into consideration the effect of any particular advertisement in society. More effective laws are the need of the hour with more strict and efficient laws. The role of ASCI should be enhanced with much more power to it in terms of granting punishments, conducting the investigation in every case, and not just acting as a suggestive body. Moreover, its power must be made clear because the laws concerning its jurisdiction are not clear in the present date. Since the role of social media influencers is also increasing, an effective strategy should be made concerning the baits provided by them as it doesn't take into consideration the quality of the product. Surrogating advertisements should be reduced to a very big percentage with more stringent punishments could be introduced.

Also, while framing a comprehensive legal system concerning advertisement laws, India can have a look at the advertisement laws of other nations where the power of self-regulation, and the private lawsuit is governing most of the advertisement industry. Therefore, there needs to be a lot of debate and discussion among the general public to persuade the government to engage in open dialogue and make huge strides in the fair and legitimate use of advertisements.