

## **Misleading Advertisements in India**

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### **Abstract**

Advertising has several roles to play. It makes the citizens aware of products so that they can make conscious choices among different products or brands. Advertising does not function in isolation. It is highly visible and persuasive in nature along with that it also generates lots of criticism and as a result creates an impact on the tastes, culture, and standard of living of society also. Advertising has to take into account several forces like consumer needs and government laws in the country. It is not a recent phenomenon to get easy recognition and profits some companies have started with misleading, false, and exaggerated information in advertisements. But in the competitive business world companies have to focus on maintaining a clean and positive image so that they can stay for long in competition and can make more sales. Companies that have the support of the community and its consumers can only survive for a long and they cannot leave it to consumers that they should be aware of their rights on their own. This paper discusses what misleading advertisements are and Indian laws that are existing to keep a check on them.

### **Keywords**

Misleading, Advertisements, Guidelines, Surrogate, Deceptive, Disclaimer, Stereotype, and Puffery.

### **1. Introduction**

In today's market, only those products or services are sold which are well advertised by companies to consumers. There are thousands of brands offering similar, identical, or substitute products to consumers but the point of difference for the companies is how they advertise their products or services. Advertising has both positive and negative impacts on both consumers and companies. On one hand, it assists the company in earning revenue and consumers to know about the brand, products, and its benefits in making purchasing decisions. However, on the other hand, at times companies to beat the competition misleads the consumer by putting misleading advertisements.

Misleading advertising is nothing but any published claim by a manufacturer that gives a consumer an incorrect detail of a product they are interested in purchasing. Misleading and false advertising leads to a negative impact on the consumer and also influences their social behavior. The impact of misleading advertisements is very deep, especially on children.

In addition to other laws, the Central Consumer Protection Authority (CCPA) exercised its power and conferred guidelines basically which focus on bait advertisement, free claim advertisements, and advertisements targeting children. The guidelines make it clear that if advertisements are not up to the standard of the product and services being offered they will be considered misleading. As per guidelines advertisements must have honest, true, and transparent representations, must ensure that the claim must fulfill its promise, not to be used for publicity, and suggest claims which are universally accepted.

The awareness laws for advertising cannot curb misleading advertisements. There is a need to involve consumers in the policies making process so that they at their own come forward to protect themselves. At the same time, manufacturers should ensure that they satisfy their consumers with good products and honest advertising.

## **2. Objectives of the Study**

The present study is being undertaken to achieve the following objectives: -

- 2.1** To study the definition and concept of misleading advertisements.
- 2.2** To understand different types of misleading advertisements.
- 2.3** To analyze various laws applicable to misleading advertisements in India.

## **3. Research Methodology**

Data for the research paper is secondary and sources of data are published articles online and offline, Books, Newspapers, and Data available on the official website of ASCI.

## **4. Review of the Literature**

**Sabaat Fatima (2020)** has given in detail about the regulatory framework of advertisement laws in India and has concluded none of the existing regulations directly discuss the concerns of internet promotions and it is need of time to have a full law/guideline on advertisements in all forms of media.

**Madhavi Sripathi (2020)** has stated advertising is a very important tool of information but buyers should be aware of products and services at the time of making any purchase.

**Rinkey Sharma & Gaurav Som** have concluded for the reinstatement of our Indian culture and heritage norms and ethics regulations of unethical and misleading advertisements are particularly essential.

## **5. Definition of Advertising**

Advertising is mass communication i.e., messages related to products and services to persuade consumers to buy and in return increase the profits of the company. Advertising can be done by using any medium like Radio, TV, Newspaper, etc using circulars, wrappers, labels, etc. Advertisements educate consumers about product availability, price, quality, etc.

Advertisements are present everywhere from morning toothbrushes to good night coils in the night, every product an individual consumes is hopefully an advertised product. Advertising is persuasive in nature and can motivate the target audience to buy a product and satisfy their needs.

Advertising is a non-personal audio or visual form of communication that employs an openly identified sponsor. At any point, there is no direct contact between the buyer and seller. In books of account expense incurred on advertising is shown as an expense against the profits of the company. It is done by either the company itself or some outsider advertising agency hired by the company. It is a misconception that the main aim of advertising is selling, whereas the real aim of advertising is to make buyers aware of the product and brand.

## **6. Growing Importance of Advertising**

The Indian advertising industry is one of the most influential businesses today and it has developed from a small-scale business to a large-scale full-fledged industry. It has emerged as one of the main industries and has broadened its horizons be it the creative aspect, the capital employed, or the number of personnel involved both at domestic and international level.

Advertising is persuasive in nature as a result it plays an important role by creating primary demand for the product or service leading to an increase in customers. In addition, it stimulates the distribution of products to every corner of the world, advertising creates employment opportunities, makes loyal customers, provides information regarding the developments taking place in society, makes the consumer believe that the advertised product can satisfy their needs, contributes to economic growth and increase in the standard of living of people.

The scale of the advertising industry is a symbol of the nation's way of life. With the fast expansion of the economy and high level of competition, in recent times advertising has emerged as one of the most demanding, competitive, and

challenging industries. Due to the high level of competition and to get their brand noticed a few advertisers have started with exaggeration and misrepresentation of facts which ultimately affect sensitive minds and leave a negative impact on society. Advertising should be fair and truthful and protect Indian culture and values and the legal system should ensure the same.

## **7. Misleading and False Advertisements**

Advertising is an important medium commonly used by most of the companies to exhibit all about their products, prices, and offers if any to their consumers. Comparison between products and brands is the soul of advertisements. The real issue starts when the implied comparison becomes increasingly explicit. Companies try to compete over the advertisements as it helps them in constructing their brand image but the comparison becomes a competition for earning a larger market share amongst various brands. However, this has led to an increase in false claims by brands and advertisements with regard to misinformation about various features like quality, services, prices, etc. on products.

Misleading or false advertisements are those which mislead an average consumer's mind in any way may be by false claims or deceitful information, omitting any material fact which is a must to display, misrepresentation of facts, unfair trade practices, unclear content, or unavailable offers. There is no single acceptable approved definition of misleading advertisement, but IRDA (Insurance Advertisements and Disclosure) Regulations, 2000 defines "unfair or misleading advertisement" as any advertisement-

- that fails to clearly identify the product as insurance.
- makes claims beyond the ability of the policy to deliver or beyond the reasonable expectation of performance.
- describes benefits that do not match the policy provisions.
- uses words in such a manner that it hides or minimizes the real costs of the hazard or risk in the policy.
- omits to disclose or discloses insufficiently, important exclusions, limitations, and conditions of the contract.
- gives information about a product or service in a misleading way; illustrates future benefits on assumptions that are not realistic with current performance.
- where the benefits are not guaranteed, do not explicitly say so as prominently as the benefits are stated; implies a relationship like sponsorship, or affiliation does not exist; makes unfair comparisons with products which cannot be otherwise compared.

Misleading advertisements are the ones that violate consumers' right to correct information about the product. They can cause both financial loss and harm to the

health of a consumer. They share tall and questionable promises about the efficacy of a product without substantial proof.

**7.1** There are three major elements of false advertising namely, fraud, falsity, and misleading. They are explained as: -

**7.1.1** Fraudulent advertisement is when the product displayed is different from what is received. Such advertisements are made to deceive consumers. They do affect consumer decisions on whether to buy or not in a positive manner, as false information tends to be more positive about the good or service being offered for sale than what it is in reality.

**7.1.2** Falsity in advertisements refers to inconsistency in the facts, for instance, when car manufacturers claim that the car average is higher than it actually is or fairness cream promises to make one fair in six weeks, etc.

**7.1.3** Misleading advertising is when the product is shown in such a way that creates an impression of untrue features which do not exist. Misleading Advertising includes: -

- Exaggerating and overstating
- Expressing unrealistic attributes of the product
- To get the more effective use of some professional concepts
- Fake licenses
- False warranties
- Use of certain misleading images and cinematic tricks
- Discounts and gifts

Advertisement is considered deceptive by the consumer and it is based primarily on the experience of existing customers to the advertisement he/she was exposed to. False advertising exists where there is a published claim that it is untrue whereas misleading advertising is any published claim that gives the consumer what is wrong with product understanding. Any individual can judge from a few things whether an advertisement is trustworthy and accurate first is if it is based solely on facts and not on opinions. Second is how close it is to truth it means the claim made by the company can be proved to be true. Thirdly, it increases the desire to buy more and more.

Consumers become careful when they come across any misleading and false advertisements and it does impact their buying behaviour. The Indian government has adopted several measures to control misleading or fake advertisements, unfortunately, due to lack of knowledge deceptive advertisements are still on.

## **8. Ways in which Advertisements Mislead Customers**

The sellers of products of false or misleading advertisements provide the consumer with false, untrue, misleading, and corrupted information regarding service, buying terms, availability of the product, etc. so that they can encourage consumers to buy the product or at least visit the particular store. Various ways undertaken by sellers to mislead consumers are: -

### **8.1 Bait and Switch Advertising**

In bait and switch offers, the advertiser advertises a lower or a less expensive product, but when a customer goes to the store and asks for the same product, they are informed it is not available or it is preferred to buy a better version, etc. The customer is convinced to purchase a product at a higher price. In such cases, a sale is just bait to switch to a really expensive product. For example, a car dealer has advertised a car and when the buyer goes to an outlet to buy the same, he is informed that it just got sold in the morning.

### **8.2 Unverified Claims**

Advertisements containing unverified claims or misleading statements are done by companies in such a manner that they contain a scientifically false statement or commitment about their product. Hindustan Unilever Ltd (HUL) had claimed in its advertisement that their Lever Ayush soap was based on some 5000 years old 15 herbs mentioned in Ayurveda scriptures and some other claims were also made which proved to be misleading and unverifiable.

### **8.3 Stock Shortage**

At times when customers visit a particular store to buy an advertised sale product, they encounter a shortage of stock. Companies should have good inventory before putting the product on sale or they should remove the item from sale as soon as it is out of stock. Such an experience of customers leaves a negative impression about the brand. For example, at certain sites, it is written two hundred people have it in their cart and the product is limited or the product is in high demand only the last ten left, etc.

### **8.4 Surrogate Advertising**

Surrogate advertising is the one where a brand or product is of one but inside it message and advertisement which is telecasted are for another brand or product. This all started when the Government decided to ban advertisements of products that are in any manner harmful to health or the body. After the implementation of this decision, the major companies of liquor & tobacco were badly affected so they found other ways to advertise their products. The

advertisements for such products are called "Surrogate Advertisements". The main objective of surrogate advertisements is to compensate companies for the losses they incur arising out of the prohibition on advertisements of one particular product (i.e. liquor or cigarette). It is like a proxy war weapon. For example, Kingfisher was a famous airline brand and it has given a lot of recognition to the original category i.e. beer, and now to other products such as Kingfisher mineral water and club soda also. Bagpiper which is a popular whisky brand in India, utilizes Water, Soda, and Music as surrogate substitute products.

### **8.5 False Promises**

Advertisements on behalf of advertisers make promises which are impossible to do or can never be fulfilled. For example, an advertisement for a detergent soap admits that it can remove grease in just one wash, and if the manufacturer of a brand cannot prove this, it is an incorrect statement or a false advertisement.

### **8.6 Inconsistent Comparisons**

Comparisons that are inconsistent in nature are done by advertisements of one product with many others, implying it is their product only which is genuine and all others are only money-making devils and don't at all care about the benefit of their consumer. It shows that their product is larger in size than what its actual size. For example, advertisements for beauty creams show the product to be very big in size but in reality, it is not, another one is the false coloring of food to make people believe food is fresh and healthy than it really is.

### **8.7 Use of Children in Advertisements**

At present market conditions are highly influenced by children's entering into advertisements and this is done in certain cases to enhance sales. In India, there is no age restriction on watching advertisements and this benefits advertisers and marketers a lot. If advertisements are relevant for children and also help to promote products in the market then only children should be part of same otherwise, they should not be. The presence of children influences both Indian culture and children's push their parents for particular products. For example, children have no role to play in advertisements of Rin and Tide. IDBI bank portrays children in their advertisements and portrays from small children to adults' friendship will go on with the bank, this concept is good but children are there just for the emotional angle and there is no point featuring children in it.

Advertisers should not target children and utilize their presence for their own benefit, rather they should shift focus on the age segment which is relevant for them and can correctly evaluate the effectiveness of advertising.

### **8.8 Fees and Surcharges**

Service charges, surcharges, and some hidden amounts of fees are taken from customers which are not disclosed in the advertised price. The room rate advertised by hotels does not include hidden charges like the use of certain facilities like Wi-Fi, Sports facilities, etc.

### **8.9 Puffery**

Puffery or exaggeration is the use of harmless superlatives or overstated statements made by companies for the purpose of attracting buyers to a particular product or service or to rise up the image of a product by companies for business purposes. Claims made in puffery are generally personal opinions and not fact-based and cannot be verified. It is also considered unethical at times.

Puffery talks highly of products and uses terms like best, finest, excellent, number one, etc. but none of them can be proved. The law also permits selective trade-related exaggeration. For example-Red Bull says one will have wings after drinking it but that is not true. In 1997 Hindustan Lever Company restrained and stopped their campaign when they claimed their toothpaste is 102 percent better than Colgate.

### **8.10 Promotional Contest**

All promotional contests are mandatorily required to disclose all information about contests and if they do not disclose the number of prizes, value of prizes, etc., and any important information relating to the chances of winning which also includes the odds of winning will come in the preview of misleading advertisements. Refund coupons or half price as advertised should all be clearly stated and there should not be a condition to purchase to win any contest.

### **8.11 Deceptive Advertising**

Deceptive advertisements are the ones that mislead consumers with false offers and discount sales etc. It means taking advantage of consumer psychology and depriving them of choice is one form of unethical behavior. The primary point of advertising is to convince clients to purchase products/services that they promote and persuade consumers into commercial transactions that they might otherwise avoid. Advertisers should always be able to justify the validity of any claims they make with supporting evidence.



Some examples of deceptive advertisement are a company suggests as long as consumer use their edible oil they will be free from any heart-related issues is deceptive incorrect and misleading, the consumer tends to feel protected which is a misnomer. Also, if a face cream advertisement claims that it will not only remove dark spots on the face but even prevent them from coming back, if the manufacturer is not able to prove this, it is considered to be a deceptive advertisement.

#### **8.12 Women Stereotype**

No matter what society will generally create some sort of stereotype about women. Majorly the entire household products such as soap, washing powder, etc. use women to advertise it which generates stereotypes in society about women that they are limited within the boundaries of their house only. Media has become a powerful tool of information and it creates such stereotypes and passes this to other groups. Most of the famous washing powders be it Rin, Tide, etc always use a woman to promote their brand as well as their product. Depicting scantily clad women in the back end of a Figo car, this advertisement in 1993 led to the passage of a new anti-rape law by Parliament.

#### **8.13 Misuse of Free**

When any advertisement uses the word "free" ("buy one, get one free" sale) it actually misuses the word 'free'. There it is an established fact that the consumer is very definitely paying for what is apparently free because the cost is already included in the overall declared price of the product or the buyer is already the price of the first item. Also, the advertising costs in most of the cases are actually paid by the consumer. For example, if a company is giving any gift on purchase, it should be a genuine gift and not something whose price is already included in the main product. Another case is when a mobile operator promises STD calls for a certain paisa per minute and conveniently forgets to mention offer is applicable only when calls are made to a specific number only then it constitutes misrepresentation.

#### **8.14 False Warranty Guarantee**

Whenever any company or seller through advertisements makes any representation that purports to be a warranty or guarantee of a product, or a promise to replace, maintain or repair an article, or any part of an article and it is materially misleading or where there is no promise that same will be carried out is a case of false warranty guarantee in an advertisement. A company issued a warranty card for three years but did not mention one year warranty for the product and two years for labor charges and the customer bought believing it for three years for the entire product.

### **8.15 Comparative Advertising**

Comparative advertising, are those advertisements where the advertiser advertises his goods or services by comparing them with the goods or services of another party (they may or may not directly mention the name of the competitor). This comparison is done to increase the sales of the advertiser. Comparison is made based on expense, efficiency, output, usability, and so on where it is suggested that the advertiser's product is of the same or superior quality or by denigrating the quality of the product it is compared to. All this is done to increase the sales of a company.

Example: The advertisement of Pepsi for Coca-Cola. Similar to each other, these brands cut some of their features in the advertisement. One comparative advertisement was of Colgate and Pepsodent where Pepsodent claimed directly that Pepsodent is now better than Colgate's strong teeth delivering 130 percent germ attack power.

Steps taken by Government and Departments to check misleading advertisements  
In the past few years, complaints against misleading advertisements have increased considerably. The Advertising Standards Council of India (ASCI) has tried to address some of these complaints by issuing guidelines and many other ministries and government departments have also undertaken various initiatives in this direction.

## **9. Measures taken by the Department of Consumer Affairs to Check Misleading Advertisements**

- 9.1** The Indian Government has set up an Inter-Ministerial Monitoring Committee with members from other ministries and departments and ASCI to keep a check on misleading advertisements.
- 9.2** Industry experts have been asked to bring out a document titled Corporate Consumer Responsibility which would contain a code of business ethics on unfair trade practices including misleading advertisements.
- 9.3** The Government has implemented an online portal dedicated to lodge complaints against misleading advertisements by consumers.
- 9.4** Counter Campaign strategies are being worked out with authorities like ICICI, RBI, etc.

Legislative framework available in India to curb misleading advertisements to deal with misleading claims and advertisements made by companies are:

- Consumer Protection Act, 2019
- The Monopolies and Restrictive Trade Practices Act, 1969
- The Food Safety and Standards Act, 2006

- The Drugs and Cosmetics Act, 1940
- The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1955
- The Cable Television Networks (Regulation) Act, 1995
- The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act, 2003 (Department of Health and Family Welfare).
- The Bureau of Indian Standards (Certification) Regulations, 1988 as under its Rule 7 (1) (l), (g), and (h) prohibits misleading advertisements about BIS certification.
- The advertisements which are aired on private satellite TV channels are regulated Cable Television Network (Regulation) Acts 1995, under the prescribed advertising code.
- Misleading advertisements in print media are being monitored by the Press Council of India under Section 14 of the Press Council Act of India 1978.
- Advertising Standard Council of India (ASCI)-Advertising Standards Council of India has established the ASCI Consumer Complaints Council to deal with false and misleading advertisements. The Advertising Standards Council of India accepts complaints against false and misleading statement advertisements from firstly the consumers or government secondly from one advertiser against another advertiser and finally from the ASCI board members, members of the Consumer Complaint Council, etc. The Code of ASCI tries to achieve fair advertising to protect the interest of the consumer and it uniformly applies to every advertisement irrespective of the medium of the country it originates.
- The Central Consumer Protection Authority (CCPA) has issued certain guidelines for the prevention of misleading advertisements and their endorsement also and also to protect consumers from unfair trade practices. The guidelines protect consumer rights with clear and mandatory conditions for valid and non-misleading advertisements and free claims advertisements. Guidelines have been formed on when to recognize and allow bait advertisement, disclaimers in advertisements, and disclosure of connection between endorser and trader. Besides these, the guidelines also prohibit surrogate advertising and prescribe restrictions on free claim advertisements and advertisements targeted toward children. The duties of manufacturers, service providers, advertisers, and advertising agencies are outlined in detail under the guidelines.
- A huge penalty is imposed for violating the guidelines. If found guilty, the CCPA can impose a penalty of INR 10 lakhs on manufacturers, advertisers, and endorsers of misleading advertisements. For subsequent mistakes, the

CCPA may impose a penalty extending up to 50 lakh rupees. The Consumer Protection Act authorizes CCPA to prohibit the endorser of a misleading advertisement from making any endorsements for up to one year, which can be further extended to 3 years if they continue with non-compliance.

All rules and guidelines made apply to all advertisements regardless of form and medium they are published in, any manufacturer, service provider, or trader whose goods, products, or service are being advertised, an advertising agency whose services are availed by the manufacturer or service provider to advertise their products or services.

### **Suggestions to Handle Misleading Advertisements**

Following are some of the suggestions to overcome misleading advertisements: -

- Every advertisement irrespective of the medium published should include every single detail in the advertisement with proper legal and documentary proofs of same.
- To prevent consumers from being deceived by such advertisements, it is necessary to identify the spots where consumers need to be cautioned.
- In addition to updating laws or legislation, the government should also set up a sovereign system to monitor law enforcement and ensure inflexible enforcement.
- "Pre-clearance" involves evaluating ads before they are published or broadcast by the self-regulating body this will avoid false and misleading advertisements. The advertisements which are to be shared with the public should be clear and simple and not contradictory, ambiguous, or exaggerating a lot.
- Strict punishment and if possible mandatory jail terms for advertising magic cures must be provided.
- ASCI guidelines are in existence for a very long, but still, there is a lack of awareness among consumers as well as advertisers. ASCI and other Non-Governmental Organizations have to play the role of watchdog to curb misleading advertisements in the best possible manner.
- It is an urgent requirement of the current time to strengthen the existing legal provisions and to introduce a new provision in the existing Acts to restrict and check commercial disparaging in comparative advertising.
- A comparative advertisement should be informative in nature and highlight features of products and services and not be done with the purpose to attack, criticize, or discredit other products and services may be directly or indirectly.
- Membership in ASCI must be made compulsory for all major advertisers.

- Customers should use a rational mind and thoroughly examine and judge any product which exaggerates its performance and whether it can give claimed results or not.

## **10. Conclusion**

Advertisements have become central to the entire business industry. They are like a tool that performs certain functions like conveying information about product and services to potential customers, helping to promote a brand, etc. An effective creative advertisement in a few seconds only can both showcase and influences the mind of the consumer. Misleading or fake advertisements are governed by certain laws and hence have legal obligations. Many misleading and false advertisements have had a negative impact on consumer behavior. The moment consumers discover there is something untruthful and misleading in an advertisement they are most likely to abandon that particular product or brand. Guidelines given by concerned authorities are most likely to reduce the room for advertisers to publish misleading advertisements. The guidelines imposed will make it convenient for authorities to conduct legal proceedings against advertisers for misleading advertisements and for sure it will affect commercial activity for some time, but it will be helpful for the consumers to know their product/services in detail with more clarity and without creating any ambiguity. A complete analysis of the existing laws along with the self-regulatory authorities is required on a regular basis to comprehensively clarify the interpretation, verification, and remedial mechanism of deceptive advertisements in India.

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