
DIET PILL DEBACLE: ARE INDIAN ADVERTISEMENT LAWS FOR WEIGHT-LOSS PILLS SUFFICIENT TO PROTECT CONSUMERS?

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ABSTRACT

Contemporary trends have caused a strong desire among individuals to meet socially desirable bodies. With leading busy lives, people are constantly on the lookout for an easy magical solution that will help them achieve their goal weight. This paper aims to analyse ‘The Medications and Magic Remedies (Objectionable Advertisement) Act’, the statute that governs the advertising of the weight loss supplements. It examines the standards set in place by the Act for manufacturers, and the loophole’s retailers have come to use with the rise of online retail. Furthermore, products are marketed on the certifications and assurance such as that of America’s federal agency the ‘Food and Drug Administration’(FDA) and India’s Food Safety and Standards Authority of India (FSSAI). An overview of their testing and certification standards assists in demonstrating the lack of consistent testing when obtaining these certifications, resulting in a lack of information provided to consumers. Untested and unapproved diet pills place a severe risk of physical and psychological harm to its already vulnerable consumer. The paper finds that there are multiple gaps in administering the present laws and the ambiguity has lead to uncertainty in the enforcement of these laws. While the development of laws that address these harmful contemporary issues are still premature, countries like the UK have developed a federal programme that encourages transparency and awareness about the medications being consumed to combat the misinformation of false advertisements regarding weight loss pills.

INTRODUCTION

Our society places enormous pressure to fulfil absurdly high ideals of beauty and weight. With heightened levels of connectivity these days through social media and online shopping, there's usually some type of weight reduction message or promotion almost wherever you look. To put it simply, the weight loss market has managed to creep into all of our lives. With elevated levels of social media usage, it has become easier than ever for brands to influence us into thinking we must all achieve one common desirable look. Companies lean into consumers' insecurities as they market an easy fix to all weight-related issues - a diet pill.

The weight reduction pills are a fad that has been around for a long time and doesn't appear to be going away. On the contrary, access to a consumer base has only widened to companies, thus causing the weight loss market to grow. These pills are marketed as a one-stop-shop to achieve all weight loss related goals. But despite bombastic marketing promises, most are ineffective and have dangerous negative effects. When it comes to advertising for weight reduction, deception is nothing new. In old magazines from decades ago, you will discover the same bogus promises that are so prevalent today. But the reach of these businesses in which deception is so apparent today is potentially hazardous to consumer health. Experts assert that, despite their widespread availability, these pills should under no circumstances be regarded as a weight reduction solution. Even if these pills claim to be 'herbal' or 'Ayurvedic,' they are only marketing ploys and have no assurance as to how they will affect your health (Sood, 2022)¹. Given our societal concern with food and weight, this paper will look into whether India's federal measures taken towards these treatments are robust enough to keep up with the rapid growth of the weight loss market.

ADVERTISING REGULATIONS

A large number of objectionable advertisements referring to supposed treatments for sexual illnesses, stimulants, and ailments unique to men and women have recently appeared in numerous publications and periodicals. Because of their ignorance, innocent individuals fall into the trap of erroneous beliefs and not only lose significant quantities of money, but also

¹Sood, P., 2022. *The dangers of taking weight loss pills - Times of India*. [online] The Times of India. Available at: <<https://timesofindia.indiatimes.com/life-style/health-fitness/weight-loss/the-dangers-of-taking-weight-loss-pills/articleshow/63429123.cms>> [Accessed 18 May 2022].

suffer enormous suffering and physical injury. People engaged in supporting such acts may pose a serious threat to society if they go unchecked, and they deserve harsh punishment.

The Medications and Magic Remedies (Objectionable Advertisement) Act was passed in 1954 to govern the marketing of drugs in certain situations, ban the advertisement of remedies said to contain magical characteristics and provide for things associated therewith (hereinafter referred to as DMR Act). The fundamental goal of the DMR Act is to govern drug advertising in certain situations, and ban advertising associated with medicines said to have magical properties. The definition of "Magic remedy" under the DMR Act includes "any talisman, mantra, kavacha, or other charms of any kind that is alleged to have miraculous powers for or in the diagnosis, cure, treatment, or preventative measures of any disease in humans or animals, or for affecting or influencing in any way the structure or any organic function of the human or animal body"². The Act enacts regulatory measures aimed at restricting undesired marketing of hazardous medications and 'magic remedies, on the grounds that such ads promote self-medication. The Act stipulates that no person shall take part in the publication of any advertisement that promotes the use of a drug for a particular cure and directly or indirectly conveys a deceptive perception about the true nature of the drug, makes a false claim for the drug, or is otherwise misleading³.

False and deceptive adverts for health treatments may also be found in abundance on the internet. Among the websites that promoted slimming and weight loss cures were those that promoted; herbal products and magnetic devices that treated everything from headaches and back injuries to insomnia and arthritis. However, the law is somewhat outmoded and obsolete. While it forbids deceptive health claims in print media, it does not address television or internet marketing. There is no legislation that particularly punishes individuals who make false spiritual claims and defraud others. As a result, it is necessary for the government to further tighten the screws on this act by providing for a more expansive definition of 'advertisements' in order to make it compatible with the changing times and technology. There is an urgent need not only for the enactment of rigorous legislation, but also for a strict vigilance over the many

² Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954

³ Ahmad Akhram et al., *Advertisement on medicines/treatment in newspapers violating Indian laws?*, 6 International Journal of Pharmaceutical Sciences Review and Research 49–58 (2015), https://www.researchgate.net/publication/272331993_Advertisement_on_medicines_treatment_in_newspapers_violating_Indian_laws (last visited May 15, 2022).

claims made by unscrupulous practitioners about their purported ability to treat a variety of illnesses, and for the appropriate punishment of violators.

On the other hand, America's Federal Trade Commission (FTC) has the jurisdiction to regulate almost all weight-loss product advertisements. The Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) share regulatory jurisdiction over certain categories of weight-loss goods, including dietary supplements and prescription medications. In general, the FTC regulates advertising, while the FDA focuses on labelling, sales of hazardous items, and regulation of drug claims. Occasionally, the agencies coordinate their efforts regarding a certain product.

The portion of the Federal Trade Commission Act that forbids "unfair or deceptive conduct or practises" is the root of the FTC's jurisdiction to enforce the law. Deceptive claims are ones that are inaccurate or misleading in some manner, either because they misrepresent facts or because they omit vital information that customers should be aware of. The FTC evaluates two aspects of advertising claims: 1) whether the advertisement is truthful and non-misleading, and 2) whether the advertiser has adequate substantiation for all objective product claims prior to disseminating the advertisement. Both express and implied claims must be truthful and must not mislead the public. In addition, the requirement for substantiation needs to be backed by "competent and trust-worthy scientific evidence."⁴

The Federal Trade Commission has issued the following useful guidelines providing that where advertisements must have at least the evidence it claims to have. For health and safety claims, which often include weight reduction promises, "competent and trustworthy scientific proof" is required. The FTC evaluates the six "Pfizer considerations" when establishing the particular degree and kind of documentation necessary. 1) the kind of product; 2) the type of claim; 3) the advantages of a truthful claim; 4) the cost/feasibility of generating substantiation; 5) the repercussions of a false claim, and 6) the amount of substantiation that experts in the field believe is reasonable. The Pfizer factors are advantageous because of their adaptability. An advertiser that has made a sincere attempt to support a claim often has the chance to persuade the FTC that its efforts were reasonable and credible⁵.

⁴ Chester S Galloway, Herbert Jack Rotfeld & Jef I Richards, *Holding Media Responsible for Deceptive Weight-Loss Advertising*, 107 West Virginia Law Review 33 (2005)

⁵ Edward Correia, *The Federal Trade Commission's Regulation of Weight-loss Advertising Claims*, 59 Food Drug Law J 585-594 (2004).

While the FTC has a sufficiently effective screening method the Dietary Supplement Health and Education Act (DSHEA) altered the power structure such that the FDA's jurisdiction over dietary supplements is very restricted. Due to the FDA's lack of pre-clearance jurisdiction, the FTC has been particularly aggressive in regulating dietary supplement advertising and prosecuting fraudulent marketers. In the framework of new drug regulation, the FDA has the right to block the market entrance for unsafe or ineffective goods, so consumers may assume that the majority of claims have been validated. However, dietary supplements do not get pre-market approval; thus, the FTC remains wary of the majority of claims that look too good to be true and are not adequately supported by science⁶. This means that even though FTC is screening the claims of the advertisements, the scientific backing of the claims is not reliable. Thus, in the absence of product sampling and testing, the quality, effectiveness, and safety of such dietary supplements remain in doubt. This is an essential to keep in mind since online retailers advertise and attract consumers in India based on the FDA certification plastered on the packaging.

Loopholes & False advertising

The issue with these multilayered regulatory systems is that it creates gaps within the testing protocols, giving manufacturers and retailers an easy leeway to get away with advertising products with harmful ingredients disguised under products labelled safe to use by the FDA. Nutraceuticals are marketed and sold with labels promising herbal products that are natural and safe. They are often falsified in order to improve sales due to the lack of defined standards and norms for safety evaluations of these products. But the FDA despite all its resources, do not have a full-proof method of checking their over the counter weight loss supplements. Since no formal testing of the products takes place and the approval is simply based on the list of ingredients mentioned, the manufacturer has multiple ways of going around safety regulations. And since manufacturers have the FDA approval badge, it becomes easier to falsely advertise their products to consumers as safe to use.

Furthermore, with the ease of online shopping, non-regulated and imported weight loss pills have become a lot easier to sell in online retail stores, creating an effortless route for manufacturers to work past federal regulations. Anyone that is a social media user or frequents online shops is flooded with targeted advertising and is well acquainted with targeted

⁶ Jodie Sopher, *Weight-Loss Advertising Too Good to Be True: Are Manufacturers or the Media to Blame*, 22 CARDOZO Arts & ENT. L.J. 933 (2005)

advertisements. However, the plethora of available options makes it tougher to tell the truth from illegal products. One such incident to demonstrate the exploitation of the online market space is when a Mumbai based food technologist repeatedly started getting advertisements from the brand ‘Simple Organics’ on her Facebook account that was selling ‘keto’ pills that promoted weight loss. Since she was a food technologist, she was equipped with the information to judge the safety of the product. Based on her extrusive examination of the packaging, she found that the product that was being sold on Amazon was against multiple Food Safety and Standards Authority of India (FSSAI) norms by not providing a licence number, an undisclosed shelf life and more importantly, containing unapproved ingredients. While the packaging failed to provide a comprehensive list of ingredients, it did mention substances that are required to be declared as ‘additives’ and other ingredients such as ‘BHB’ (ketone molecules) which are not allowed to be present in supplements under Indian regulations⁷.

The issue with this loophole is that while there are regulations such as the DMR Act and regulatory bodies such as the FSSAI, there is no clear indication of who is to hold who accountable. In this case, when Amazon was asked to comment on the matter, they said that when they are notified of concerns regarding illegal products sold on their platform they would review the case and remove the product. On the other hand the FSSAI affirmed that they expect the e-commerce platforms to take a proactive initiative and inform the FSSAI when such a case occurs⁸. This demonstrates how ambiguous and out of date the protocol regarding their regulatory processes and enforcement actions are with regards to online advertisements and retail. Thus, giving retailers an opportunity to use this loophole to sell their products to uninformed consumers online. This indicates that the FSSAI is not being upto date with their protocol regarding their regulatory processes.

⁷ Geetika Mantri, , *Illegal Keto Diet Pills Being Sold Online in India: What You Should Watch out For*, The News Minute (2019), <https://www.thenewsminute.com/article/illegal-keto-diet-pills-being-sold-online-india-what-you-should-watch-out-99865> (last visited May 15, 2022).<<https://www.thenewsminute.com/article/illegal-keto-diet-pills-being-sold-online-india-what-you-should-watch-out-99865>> accessed May 17, 2022

⁸ Mantri G, “*Illegal Keto Diet Pills Being Sold Online in India: What You Should Watch out For*” (*The News Minute* April 11, 2019) <<https://www.thenewsminute.com/article/illegal-keto-diet-pills-being-sold-online-india-what-you-should-watch-out-99865>> accessed May 17, 2022

Harmful Side Effects

The safety and efficacy of several ingredients that are commonly used to manufacture weight-loss dietary supplements are not thoroughly investigated. A huge chunk of products on the market are not regulated or certified, thus being a catalyst of severe side effects to its consumers.

Significant hazards are related to weight loss advertisements. Considering that more than half of weight-reduction commercials are false in whole or in part and that the weight-loss business currently generates more than \$35 billion annually, the financial loss related to these marketing is plainly considerable. But what is worse is the false optimism that these assurances convey to individuals who are often desperate for assistance and who may experience severe depression if the product does not fulfil. It is also feasible that some of these advertisements might encourage harmful behaviour, such as eating disorders⁹.

Psychological Effects - Adolescent girls are most vulnerable to the false claims made by these weight loss pills. Many of these adolescent girls may not realise how advertising elicits emotional reactions or how visual and narrative strategies are used to boost their identification in weight-loss advertising, despite their ability to assess misleading weight-loss promotion critically. In a study where girls aged between 9-12 years were provided with some television and print ads pertaining to weight loss products. A common factor found amongst all their interpretations included responding emotionally by identifying with characters; trying to compare persuasive messages with real-world experiences but were less likely to recognise obvious deceptive claims such as "rapid" or "permanent" weight and the persuasive tactics through purpose-driven messages¹⁰. This indicates how vulnerable adolescent girls are in a world where social media is easily accessible, meaning they become easy targets to influencers marketing weight loss products.

Furthermore, Dr Poonam Duneja, a nutrition and fitness specialist, warns against ingesting these pills since they might cause anxiety, drowsiness, menstruation troubles, and palpitations,

⁹ Chester S. Galloway, Herbert Jack Rotfeld & Jef I. Richards, 'Holding Media Responsible for Deceptive Weight-Loss Advertising' (2005) 107 W Va L Rev 353

¹⁰ Renne Hobbs et al., *How Adolescent Girls Interpret Weight-loss Advertising*, 21 Health Education Research 719–730 (2006), <https://academic.oup.com/her/article/21/5/719/753094> (last visited May 16, 2022).

to mention a few negative side effects. She adds that since the body's natural temperature rises, individuals who consume these pills digest food quicker than ordinary people¹¹.

Health Issues - Diet pills may seem to be a miracle cure or the last option for individuals battling to reduce or maintain their body weight. These products' marketing approach emphasises making lavish promises, although the majority of these claims are not supported by serious clinical research. In truth, dietary supplements may sometimes bring hidden health risks that are not acknowledged by the producers. Even though the slimming pills comprise seemingly safe teas and extracts, they also contain artificial ingredients and synthetics to accelerate the weight reduction process. They result in muscle loss, dehydration, and extreme fat loss, and so the system begins to deplete the body's natural resources in order to stay healthy which depletes one's health over time.¹²

Actions Taken by other Countries

The UK government medicines regulator Medicines and Healthcare products Regulatory Agency (MHRA) discovered a multitude of unregulated websites, and the diet pills supplied on these websites are often counterfeit and include forbidden ingredients due to their dangerous side effects. A MHRA survey indicated that 63% of those who had used online-purchased diet tablets reported adverse side effects such as diarrhoea, bleeding, impaired vision, and heart issues. Thus, as a response to the growing issue, MHRA launched a campaign titled #FakeMeds that is targeted at young people who want to lose weight and are wary of paying for harmful or worthless medicines supplied by illicit internet providers. Furthermore, it assists customers in protecting their health and money by giving fast and simple solutions for avoiding bogus medical items while shopping online¹³.

The main goal of the #FakeMeds campaign is to create awareness of these fraudulent products and to have easy access to information providing its ingredient list, licences and side effects. A method used by the UK government is the Yellow Card reporting site. This site allows consumers to easily report to the MHRA about suspected side effects from medications,

¹¹Pragya Sood, The dangers of taking weight loss pills, The Times of India, <https://timesofindia.indiatimes.com/life-style/health-fitness/weight-loss/the-dangers-of-taking-weight-loss-pills/articleshow/63429123.cms> (last visited May 16, 2022).

¹² Pragya Sood, The dangers of taking weight loss pills, The Times of India, <https://timesofindia.indiatimes.com/life-style/health-fitness/weight-loss/the-dangers-of-taking-weight-loss-pills/articleshow/63429123.cms> (last visited May 16, 2022).

¹³ "HM Government, *Protect your Health when Buying Medicines Online*, <https://fakemedics.campaign.gov.uk/> (last visited May 19, 2022).

medical devices, e-cigarettes as well as defective and falsified products. This database acts as a consumer review page in order to allow consumers to browse through reviews before buying products. This has helped to avoid a lot of consumers from falling prey to online misinformation and false advertisements about diet pills¹⁴.

CONCLUSION

While India does have regulations to combat the harmful effects of diet pills, the regulations are not enough to counter the worldwide phenomenon that diet pills have caused within the country. In order to protect consumer interest, the government must update their outdated regulations. While the current regulations are sufficient to address television telecasted and print advertisements, the regulations are not sufficient to address the new age online market that is swarmed with a multitude of uninformed consumers. Moreover, newer regulations need to be set in stone since the current state of affairs has caused ambiguity and confusion among enforcement bodies, allowing manufacturers to get an easy pass on exploiting their consumers.

But more importantly, information is educating and providing access to knowledge about the falsehoods that prevail in retail markets. This will act as the biggest leap of success in combating the diet pill debacle in India. Not only should the government look into creating online forums like the UK that promote consumer awareness, but also create curriculums in schools to educate children about the issue. Adolescents are the easiest targets for weight loss pill sellers, thus it is essential to encourage group discussions and forums within classrooms to enable them to be able to communicate thoughts about healthy eating, nutrition and weight loss advertisements which may assist the development of critical thinking abilities. This is a relevant, real, and engaging method to promote healthy diets and weight control education.

¹⁴ HM Government, *Protect your Health when Buying Medicines Online*, <https://fakemedics.campaign.gov.uk/> (last visited May 19, 2022).