

---

# THE TRUTH BEHIND CONSUMER MISREPRESENTATION IN FASHION ADVERTISING

---

Sohom Saha, B.A. LL.B. (Hons.), Xavier Law School, St. Xavier's University, Kolkata,  
West Bengal

## ABSTRACT

The purpose of this article is to illustrate how consumer misrepresentation in fashion advertising is made possible by legal simplifications. The line between acceptable marketing techniques and misleading methods has become increasingly blurred with the growth of the fashion industry and the greater use of advertising to promote products. The current legal system controlling consumer misrepresentations in fashion advertising is examined in this article along with notable cases and potential reforms. The potential of consumers being misled grows as the fashion industry expands and advertising becomes more prevalent. This article seeks to advance thorough understanding of the legal environment pertaining to consumer misrepresentation in fashion advertising by examining the interaction between advertising restrictions, consumer protection laws, and the changing expectations of consumers. In India due to the country's enormous and diverse consumer market. Consumer rely heavily on advertising to make informed purchasing decision, and deceptive practices can lead to financial losses as well as consumer trust in the fashion industry. The article underlines the relevance of significant legal entities such as the National Advertising Division (NAD), and Self-Regulatory Organisations (SROs) in monitoring and regulating advertising claims. It also investigates the effects of consumer misrepresentation on individual consumers as well as the fashion industry as a whole. By studying relevant Indian Case Laws, advertising restrictions, and consumer protection laws, the paper sheds light on the challenges confronting fashion advertisers accused of misleading practices and analyses possible legal remedies. The article proposes a balanced approach to resolve this issue by reinforcing advertising norms, educating customers and industry stakeholders about deceptive practices, and enforce consumer protection laws. By increasing the knowledge and understanding of the regulatory framework, this article aims to contribute fair and ethical advertising practices in fashion sector. The ultimate goal is to foster

consumer trust while preserving the integrity of the fashion advertising industry.

**Keywords:** Consumer Misrepresentation, Consumer Protection Laws, Legal Simplifications, Advertising Restrictions, Fashion Industry, consumer trust, consumer expectations.

## **INTRODUCTION**

The Fashion Industry has historically played a significant role in society, moulding identities, determining trends, and expressing cultural values. With the advent of mass media and the birth of advertising, fashion companies have increasingly adopted a variety of marketing methods to promote their products and communicate with customers. However, in order to increase sales and profits, some fashion advertisers have engaged in deceptive practices, misrepresenting their products and misleading consumers. Consumer deception in fashion advertising is the act of providing erroneous or misleading information about a fashion product in promotional activities such as print advertisements, television commercials, web marketing, and social media posts. Misrepresentation includes exaggerating the quality or durability of a garment, digitally changing models features to an unrealistic degree, and falsely claiming specific benefits or characteristics of a product.

### **Significance of the issue**

In India, consumer deception in fashion advertising is incredibly significant. The Indian Consumer market is massive and diverse, and shoppers rely significantly on advertising to make informed purchasing decisions. When fashion advertisers use deceptive practices, such as making misleading or exaggerated claims about their products consumers risk being deceived and making purchases based on wrong information. This is not only results in financial losses, but it also erodes client faith in the fashion industry. The consequences of consumer misrepresentation go beyond individual customers, it jeopardises the integrity and prestige of the fashion industry as a whole. Dishonest advertising practices can undermine a company's reputation and long-term performance because fashion companies rely on consumer trust for growth and sustainability. As a result, tackling consumer deception is critical in order to promote transparency and accountability in the Indian Fashion Industry.

### **Objective of the article**

The goal of this article is to provide a comprehensive understanding of the legal situation in India regarding consumer misrepresentation in fashion advertising. This article tries to shed light on the truth behind consumer deception and its ramifications for both consumers and the fashion business in India by studying important case laws, advertising restrictions, Consumer Protection Act, and the increasing expectations of Indian Customers. The purpose of this article is to look at significant Indian incidents of consumer fraud in fashion advertising, as well as the legal precedents they have established. By reviewing these case laws, we can obtain insight into the difficulties that fashion advertisements confront when prosecuted for deceptive practices, as well as various legal remedies.

### **Hypothesis**

1. The existing statutory framework and the actual enforcement of consumer misrepresentation in fashion advertising legislation.
2. Consumer deception fashion advertising will be decreased if advertising standards are strengthened and established a clear guideline.
3. Consumers will be empowered and appropriate advertising practices will be encouraged if consumers and industry stakeholders are educated about consumer deception.
4. To address consumer misrepresentation in fashion advertising, a balance must be struck between free speech rights and consumer protection

### **Methodology**

To achieve the objective of this article a complete research technique was used, with an emphasis on the Indian context. This methodology includes a comprehensive review of significant Indian Case Laws, Legal Statues, regulations, and scholarly articles on fashion advertising, consumer protection, and advertising standards in India. The legal framework and issues involved in major Indian Consumer Misrepresentation in fashion advertising cases were extensively examined. In the case of (1997) *Hindustan Unilever Limited v. Colgate Palmolive India Limited*<sup>1</sup> highlighted the issue of comparative advertising and the use of misleading

---

<sup>1</sup>Hindustan Unilever Limited v. Colgate Palmolive India Limited C.A No. 3288 of 1998

statements. The court emphasized the importance of fair competition as well as the requirement for advertisers to substantiate claims made in advertisements. This case is instructive in understanding India's legal approach to consumer misrepresentation in advertising.

To provide a thorough grasp of the Indian legal framework and regulatory bodies, such as the Advertising Standards Council of India (ASCI) and the Consumer Protection Act (2019) was conducted to provide a comprehensive understanding of the Indian context. This research methodology ensures a thorough examination of the topic, incorporating legal, scholarly, and practical viewpoint unique to India.

## CONSUMER MISREPRESENTATION IN FASHION ADVERTISING

In Fashion advertising, consumer misrepresentation refers to the dissemination of erroneous or misleading information about fashion products or brands in order to deceive consumers. It is considered an unfair trade practice in India and is subject to Consumer Protection Acts.

**Section 2(47)<sup>2</sup>** Definition of "Unfair Trade Practice" under this rule, consumer misrepresentation in fashion advertising is classified as an unfair trade practice. It includes any deceptive practices that mislead consumers about the nature, qualities, or quality of the product.

### ***HARSH KALRA V M/S IMPERIA STRUCTURES LIMITED<sup>3</sup>***

In the case *Harsh Kalra vs Imperia Structures limited<sup>4</sup>* where the court ask to retain the amount deposited by the complainant during the period of 2011 to 2016. The court very extensively referred to the **section 2(11) and section 2(47) of the Consumer Protection Act 2019<sup>5</sup>** which are para-Materia to the **Section 2(1)(g) and Section 2(1)(r) of the Act 1986<sup>6</sup>**.

**For effective understanding we need to look at the facts of the case very briefly.**

The matter related to a builder – buyer dispute. There was a contract where the builder would actually build a construction project for the complainant. A sum of 59,70,216 was already deposited by the complainant to the builder. The proposed date of the completion of project

---

<sup>2</sup> Consumer Protection Act, 2019

<sup>3</sup> Harsh Kalra v M/S Imperia Structures Limited

<sup>4</sup> Ibid

<sup>5</sup> section 2(11) and section 2(47) of the Consumer Protection Act 2019

<sup>6</sup> Section 2(1)(g) and Section 2(1)(r) of the Act 1986

was 22<sup>nd</sup> of August, 2016 but subsequently after 4 years 9 months in the year of 2021 it was seen that the builder was incapable to complete the project.

The learned counsel for the complainant claimed as because the entire amount of 59,70,216 was already deposited and the builder was incapable of rendering his services which leads to the deficiency in service which is explicitly said by the NCDRC.

The learned counsel for the complainant also claims that the entire amount should be immediately refund back. In the facts if the case it was also seen that the complainant is having a home loan. The learned counsel also held that there was significant delay in planning, execution as well as rendering of the project.

On the other hand, when the case brings before the NCDRC The honourable judges held this fact that there was significant deficiency in service of the builder because of planning, execution as well as keeping all the materials intact i.e., doing the land acquisition work properly, planning of work properly.

So, from the above facts the Honourable NCDRC also contended that the amount should be refunded back with 9% of interest.

Subsequently we find that the Honourable NCDRC stressed on two terms i.e., deficiency in service fault and unfair trade practice. Deficiency in service means that there is certain negligence in the service or there is any unreasonable delay which leads the complainant to face problem. So, this problem should be taken into account of builder and not the complainant.

From the preliminary understanding from the facts of the case it can be seen that the Honourable NCDRC held the builder responsible for all this delay and not the complainant.

## **IMPLICATIONS FOR CONSUMER**

Consumers who are misled by fraudulent fashion marketing face a range of unpleasant consequences that can have a significant impact on their well-being and consumer rights. These implications could include financial loss, diminished self-esteem, and a lack of trust in the fashion industry. This is where a phrase '**misleading advertisement**' comes.

As per the **Consumer Protection Act, 2019**, provisions on misleading advertisements:<sup>7</sup>:

1. Falsely describes such product or service; or
2. Gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
3. Conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice;
4. Or deliberately conceals important information;

**Section 21 of Consumer Protection Act, 2019**<sup>8</sup> deals with power of Central authority to issue directions and penalties against false or misleading advertisements.

**The Cable Television Network Rules, 1994**<sup>9</sup>: The Advertising Code, established by Rule 7 of the Cable Television Network Rules, mandates that all advertising must adhere to the laws. The advertised products and services must be free of defects or deficiencies as defined by the Consumer Protection Act, 1986, and they must not contain any references that re likely to mislead the public into believing that the advertised product or any of its ingredients possesses some special, supernatural, or miraculous property or quality that is difficult to prove.

**The Cable Television Network Regulation Act, 1995**<sup>10</sup>: Section 6 of the Cable Television Network Regulation Act, Chapter II of the Cable Television Networks (Regulation) Act, 1995 stipulates that no one is entitled to transmit or re-transmit any advertisement through a cable service unless such advertisement complies with the prescribed advertising code.

***DABUR INDIA LTD. V/S M/S COLORTEK MEGHALAYA PVT. LTD.***<sup>11</sup>

In the case *Dabur India Limited v M/S Colortek Meghalaya Private Limited*<sup>12</sup> this case was place before the Honourable High Court Delhi presided over by the Judges Justice Madan B.

---

<sup>7</sup> <https://www.legalserviceindia.com/legal/article-4708-consumer-protection-act-2019-restraining-false-and-misleading-advertisements.html>

<sup>8</sup> Section 21 of Consumer Protection Act, 2019

<sup>9</sup> The Cable Television Network Rules, 1994

<sup>10</sup> The Cable Television Network Regulation Act, 1995

<sup>11</sup> Dabur India Ltd. v M/S Colortek Meghalaya Pvt. Ltd. FAO (OS) No. 625 of 2009

<sup>12</sup> *ibid*

Lokur and Justice Mukta Gupta. The case has itself ended in Delhi High Court. The High Court while reserving its judgement has taken help from various past Honourable Supreme Court Judgements in order to reserve its judgements on this matter.

In this case both companies are mosquito repellent manufacturer. The appellant company manufacture the mosquito repellent under the brand Odomos Naturals and the defendant company manufacture the mosquito repellent under the brand Good Night Naturals. The appellant side contended two questions to the honourable High Court.

Questions raised by the appellant side:

1. Whether the commercial telecast which was made by the defendant side actual disparaged the product of the appellant?
2. Whether the appellant side was entitled to an injunction on the advertisement of the defendant side or not?

The reasons cited for these questions because the appellant side contended that they were one of the largest manufacturers of the oil in the country and they control 80% of the market share in India.

Another thing which was contended in this fact that the commercial telecast by defendant side which was made in the news was done on 8<sup>th</sup> October 2009. The main contention of the appellant was that this type of commercial disparages really hurt them and the respondent should be stopped from further such telecast so that appellant side doesn't have to suffer any kind of loss because the reason cited was, they injured huge market.

another contention which was raised by the respondent on the defend side was that appellant's products causes rashes, allergy and its sticky.

On these board facts and submissions, the appellant side preferred CS (OS)No. 2029/2009 along with an application for injunction under **Order 39 Rules 1 and 2 of the Code of Civil Procedure being IA No.13875/2009**<sup>13</sup>

---

<sup>13</sup> Code of Civil Procedure,1908

After that when the case went up to the Honourable High Court Delhi, the learned single judge held his opinion that this type of commercial telecast does not fall within the tort of malicious falsehood and keeping this in mind the learned single judge was have the opinion that simply or merely telecasting the advertisement regarding the sale of the product of the respondent side did not actually lead to the disparagement of the product and rejected the application for injunction.

one question was raised before the learned judge high court Delhi that regarding the oil which is called citronella which is used in the manufacturing of the oil repellent cream to which the parties told there was no question raised regarding the oil of citronella and if we take this issue into consideration then that would be diverting the focus from the main issue from this case.

While holding the judgement of the Honourable judges of the High Court Delhi they took help from various previous judgements of the case laws one is *Tata Press Limited v MTNL and others*<sup>14</sup> were the term commercial speech defined by the Supreme Court and it was said that commercial speech basically fell within the jurisdiction of Right to Freedom of Speech and Expression under **Article 19(1)(A) of the Indian Constitution**<sup>15</sup> and that is why this type of advertisement falls within the ambit of commercial speech and hence the respondent was not entitled to an injunction for the advertisement. *Virginia State Board of Pharmacy v Virginia citizens consumer council*<sup>16</sup> this is US Supreme Court Case and the India Supreme Court took help from the judgement of the US Supreme Court though commercial speech which is entitled to the first amendment protection. The government was completely free to recall commercial speech which is falls misleading, unfair, deceptive *Colgate Palmolive India Ltd v Hindustan lever ltd.*<sup>17</sup> in this case High Court took the view and took help from the judgement and come to a reasonable conclusion.

**On the basis of the law laid down by the Supreme Court, the guiding principles for the case should be the following**<sup>18</sup>:

- i. An advertisement is commercial speech and it's protected by Article 19(1)(A) of

---

<sup>14</sup> Tata Press Limited v MTNL and others (1995) 5 SCC 139

<sup>15</sup>Article 19(1)(A) of Indian Constitution

<sup>16</sup>Virginia State Board of Pharmacy v Virginia citizens consumer council (1975)421 US 748

<sup>17</sup>Colgate Palmolive Ltd v Hindustan lever ltd. (1999) 7 SCC 1

<sup>18</sup><https://indiankanoon.org/doc/82383482/> ref: pt. 14



the constitution.

- ii. An advertisement must not be false, misleading, unfair or deceptive.
- iii. There must be some grey areas but these need not necessarily be taken as serious representations of fact but only as glorifying one's product.

Lastly high court of Delhi also considered this fact that what might seem to be disparagement for one company may not seem to be disparaged for another remarks of the company and all the different type of factors like the market forces, the economic climate and the quality nature of the product etc. should be taken into consideration while deciding the factors of a consumer to make choice and keeping all this thing into consideration the learned judge of high court of Delhi contented the facts that several types of the remarks respondent company made against the appellant company's product regarding that it causes stickiness, it causes rashes etc. was amounted to deceptiveness and would amount to wrong and thus considering of this fact that there is no petition to interrogate the order of the learned single judge because it falls within the ambit of commercial speech and did not hamper the right to freedom of speech and expression of the appellant company.

## **LEGAL FRAMEWORK FOR CONSUMER MISREPRESENTATION IN FASHION ADVERTISING**

### *Advertising Regulations and Guidelines:*

1. National Advertising Division (NAD)
2. Federal Trade Commission (FTC)
3. Self-Regulatory Organization (SRO)

### **Let's discuss the above advertising regulations and guidelines in details:**

- **National Advertising Division (NAD):** National Advertising Division (NAD) is a non-profit body that dedicated to self-regulation and monitoring advertising claims in order to protect consumers from deceptive practices. The National Advertising Division (NAD) of the Better Business Bureau (BBB) evaluates advertising claims made by businesses in a range of industries, including fashion. It evaluates the truthfulness and

veracity of statements and promotes voluntary conformity to advertising standards. NAD judgements are not legally binding, but they have a significant impact on industry practices.

- **Federal Trade Commission (FTC):** The Federal Trade Commission is considering changes to its advertising guidelines to prohibit companies from submitting false positive ratings or manipulating reviews by suppressing negative ones and it is altering social media platforms about inadequate disclosure tools.

The Endorsement Guides, first enacted in 1980 and amended in 2009, which advise businesses and others on how to ensure the truthfulness of advertising based on endorsements or testimonials. Advertisers who misrepresent consumers through endorsements or testimonials may be breaking the law. The standards state that advertising must be honest with customers and disclose any unexpected materials links between endorsers and provider of an advertised products.

- **Self-Regulatory Organization (SRO):** SROs (Self-Regulatory Organization) play a vital role in developing advertising standards and rules. These agencies often strive to promote ethical advertising practices, maintain industry compliance, and safeguard consumers from misleading or deceptive advertising.

**The IRDA (INSURANCE ADVERTISEMENTS AND DISCLOSURE) Regulations, 2000 Defines “Unfair or Misleading Advertisement” as any advertisement<sup>19</sup>-**

1. That fails to clearly identify the product as insurance.
2. Makes claims beyond the ability of the policy to deliver or beyond the reasonable expectation of performance.
3. Describes benefits that do not match the policy provisions.
4. Uses words or phrases in a way which hides or minimizes the costs of the hazard insured

---

<sup>19</sup><https://www.indialawoffices.com/legal-articles/misleading-advertising-violation-of-consumer-rights-and-legal-remedies-available>

against or the risks inherent in the policy.

5. Omits to disclose or discloses insufficiently, important exclusions, limitations and conditions of the contract.
6. Gives information in a misleading way; illustrates future benefits on assumptions which are not realistic nor realisable in the light of the insurer's current performance.
7. Where the benefits are not guaranteed does not explicitly say so as prominently as the benefits are stated or says so in a manner or form that it could remain unnoticed.
8. Implies a group or other relationship like sponsorship, affiliation or approval, that does not exist; makes unfair or incomplete comparisons with products which are not comparable or disparages competitors.

**Steps taken by the department of consumer affairs to tackle the menace of misleading advertisements<sup>20</sup>:**

1. The Indian government has set up an inter- Ministerial Monitoring Committee on misleading advertisements dated on 21.02.2014 having members drawn from different ministries and authorities. ASCI is also represented in the said committee.
2. A web portal, which would enable consumers to lodge online complaints against misleading advertisements, has been implemented by the government.
3. Counter Campaign strategies are being worked out with FSSAI and other authorities like RBI, NPPA, etc.
4. Industry body has been asked to bring out a document titled Corporate Consumer responsibility which could contain code of business ethics on unfair trade practices including misleading advertisements.

**CONCLUSION**

This Article looks into Consumer deception in fashion advertising and how legislative

---

<sup>20</sup> <https://www.indialawoffices.com/legal-articles/misleading-advertising-violation-of-consumer-rights-and-legal-remedies-available>

simplifications can help. It looks into the blurry line between acceptable marketing methods and misleading approaches, the impact on customers and the fashion industry, and India's current legal structure. The goal of this article is to provide a comprehensive analysis of the legal context around consumer misrepresentation in fashion advertising, as well as to recommend relevant solutions to address the issue and encourage transparency and responsibility.

According to my findings, consumer deception in fashion advertising can have far-reaching consequences. Misleading product quality claims, digitally manipulated models, and challenges in prosecuting fashion commercials all contribute to the erosion of consumer trust and distortion of fair competition in fashion sector, while comprehensive, the current regulatory framework faces enforcement challenges and struggles to keep up with the changing advertising world, notably with the rise of influencer marketing and native advertising.

The current legal situation of India regarding Consumer Misrepresentation in Fashion Advertising includes the existence of advertising regulations and guidelines, such as those established by the **National Advertising Division (NAD)** and The **Federal Trade Commission (FTC)**, to protect consumers from deceptive practices. Furthermore, the Indian Government has formed an Inter-Ministerial Monitoring Committee on Deceptive marketing and created a website where customers can make online complaints against deceptive commercials. **Self-Regulatory Organisation (SROs)** such as the **Advertising Standards Council of India (ASCI)** help to set advertising standards.

Based on the information provided in this article there are some major drawbacks and issue related to Consumer Misrepresentation in Fashion Advertising like deceptive practices to mislead consumers about the quality, characteristics, specifications and benefits of the products. Then the blurred line between the acceptable and misleading techniques which is regulating the deceptive practices very effectively. Role of regulatory bodies like NAD, FTC, SROs plays a avital role in evaluating advertising claims but their judgement may not be legally binding, guidelines which constitutes misleading advertisers are not clear which gives advantage to the deceptive practices by fashion advertisers,

Regulatory bodies such as NAD, FTC, SROs they should work collaboratively for the betterment, consumer protection agencies should be empowered with sufficient resources and take strict action against deceptive advertisers, educating customers is the most important thing

for betterment and also strengthening the Consumer Protection Laws is essential to protect consumer's rights.

To summarize, it is the role of the regulators, industries players, consumer protection organisations, and consumer to coordinate and successfully apply the available remedies to prevent consumer misrepresentation in fashion advertising. By doing so, we can foster a trustworthy and transparent marketplace that empowers customers, maintains, fair competition, and improves the overall integrity of the fashion sector. As we strive towards the objectives, the truth behind consumer misrepresentation in fashion advertising will be revealed, ensuring that fashion advertising truly serves its function as a medium of educated and ethical communication.