
MORALITY IN MARKETING: A LEGAL RESPONSE TO UNETHICAL MARKETING

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ABSTRACT

This paper delves into the intricate ethical landscape of advertising within the Indian context. In an era marked by globalization and digitalization, the advertising industry plays a pivotal role in shaping consumer behaviours, perceptions, and societal values. This study aims to provide a comprehensive examination of the ethical considerations that underpin advertising practices in India. It explores how cultural norms, values, and traditions influence advertising ethics, as well as the challenges posed by the intersection of modernity and tradition in marketing campaigns. Furthermore, it scrutinizes the regulatory frameworks that govern advertising in India, assessing their effectiveness in upholding ethical standards.

Utilizing a mixed-methods approach, including case studies, content analysis, and surveys, this research seeks to provide a nuanced understanding of the ethical dynamics in Indian advertising. It also evaluates the awareness of ethical issues among industry professionals and consumers and the extent to which these concerns influence decision-making. The findings of this study are expected to offer critical insights for advertisers, marketers, policymakers, and scholars alike. By shedding light on the evolving role of ethics in Indian advertising, this research contributes to the ongoing discourse on responsible and socially conscious marketing practices. Ultimately, it underscores the significance of ethical considerations in shaping the future of advertising in a culturally diverse and dynamic nation like India.

Keywords: Ethical Landscape, Globalization, Digitalization, Pivotal, Scrutinizes, Nuanced, Advertising Practices, marketers, policymakers.

INTRODUCTION

Advertising, as a dynamic and pervasive force in modern society, holds the power to shape consumer behaviors, influence public perceptions, and reflect the values of a given culture¹. As we navigate the digital age, where information flows seamlessly and borders blur in the online marketplace, the ethical considerations surrounding advertising practices have gained unprecedented importance. In this context, our research paper delves into a thorough examination of the complex connection between ethics and marketing, paying special attention to the Indian context.

In recent decades, India has experienced a remarkable transformation in its advertising industry. With a burgeoning middle class, rapid urbanization, and increasing connectivity, the country's advertising sector has expanded exponentially, presenting both opportunities and ethical challenges. This transformation raises fundamental questions about the ethical boundaries that advertisers must navigate within a diverse, multicultural, and rapidly changing society.² We recognize that advertising does not exist in isolation but is deeply intertwined with culture, societal norms, and regulatory frameworks. As such, this paper endeavors to provide a holistic examination of the ethical dilemmas faced by advertisers in India, the cultural influences that shape their decisions, and the effectiveness of existing regulatory mechanisms. Advertising, as an integral component of contemporary business and culture, wields an influential role in disseminating information, shaping public perception, and driving consumer choices. In today's digital age, where advertising transcends geographical boundaries through online platforms and social media, its impact has become more profound than ever before. However, this ubiquity also raises concerns about the ethical boundaries that govern advertising practices.

The advertising landscape in India, like many emerging economies, has witnessed a remarkable transformation. With a population of over 1.3 billion people and a growing middle class, India presents a fertile ground for advertisers and marketers. The country's advertising industry has evolved rapidly to keep pace with changing consumer preferences, technological

¹Ethics in advertising (February 22, 1997).

https://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_22021997_ethics-in-ad_en.html ,(last visited 28 February,2024)

² Murphy, P. E. (1998). Ethics in Advertising: Review, Analysis, and Suggestions. *Journal of Public Policy & Marketing*, 17(2), 316–319. <https://doi.org/10.1177/074391569801700215> , (last visited 28 February,2024)

advancements, and globalization. As a result, the ethical dimensions of advertising in India have become increasingly complex and critical.

WHAT IS ETHICS?

Ethics is the "Good Conduct" or "Conduct which is Right in View of the Society and the Time Period" concept. Different ways of acting and behaving are universally accepted as "good" or "bad".³ In other words, moral standards and values that direct a certain group's decisions and behaviours are known as ethics. In ethical decision-making, individuals must choose between what is right and wrong, what is good and bad. This process is guided by a set of moral principles that are relevant to the specific time, place, and society involved.

Understanding human behaviour is learned through knowledge. It has been noted that ethics refers to a system of moral principles that guide an individual's behaviour. According to Michael J. Meyer, Ethics deals standards of behaviour that our society accepts. The early theories studied ethics as a normative perspective, which means that they were concerned with "constructing and justifying the moral standards and codes that are adopted. Barry (1979) defines ethics as "the study of good and bad human conduct which includes various actions and values."⁴

ETHICS IN ADVERTISING

The ethical value of advertising. Ethical principles take precedence over the blending of art and facts in advertising communication. Advertisements need to be honest and ethical in today's cutthroat, buyer-driven market. The credibility of the company is damaged if an advertisement is deceptive. Instead of looking at it from a legal standpoint, one must consider the truth in advertising from the perspective of the consumer. The advertising industry has frequently come under fire for making false or inflated claims about the products, services, and goods they market.⁵

³ Shah, Kruti; Souza, Alan D, "Advertising and Promotions an IMC perspective", Tata Mc Graw Hill Education Private Limited, (2009), Pg No. 241-258, 259- 284, 312-388

⁴ A study on ethical issues in advertising and analyzing different ... - core. core. (n.d.). <https://core.ac.uk/download/pdf/236086404.pdf>, (last visited 28 February,2024)

⁵ Laczniak, G. R. (1983). Framework for analyzing marketing ethics. *Journal of Macromarketing*, 3(1), 7–18. <https://doi.org/10.1177/027614678300300103>, (last visited 28 February,2024)

Ethics play a pivotal role in the advertising industry, serving as the cornerstone of trust between advertisers and consumers. While advertising offers numerous benefits such as raising awareness, informing consumers, and driving sales, there are ethical considerations that must be addressed. An ethical advertisement is one that maintains standards of decency, refrains from making false or fraudulent claims, and avoids deceptive practices. However, in today's advertising landscape, there is a prevalence of puffery and exaggerated claims⁶, with advertisers often prioritizing attention-grabbing tactics over ethical considerations. Despite the aim of increasing demand and sales, these exaggerated advertisements risk eroding consumer trust and damaging brand reputation. While advertisers may argue that their embellished messages serve to differentiate their products, highlight advantages, and attract attention, the ethical implications cannot be overlooked. Many consumers perceive such advertisements as dishonest, misleading, and morally questionable, leading to skepticism and cynicism towards advertising as a whole. Therefore, striking a balance between effective marketing strategies and ethical standards is essential for maintaining consumer trust and upholding the integrity of the advertising industry.

Advertising's nature and aim are directly correlated with its ethical standards. Exaggerating the ad is sometimes required to demonstrate the value of the product. The goal and character of advertising are both intimately tied to advertising ethics. Exaggerating the ad is sometimes important to demonstrate the goal and character of advertising are both intimately tied to advertising ethics⁷. To demonstrate a product's benefits, it may occasionally be necessary to exaggerate the advertisement.

For instance, a sanitary napkin advertisement demonstrates how, when a sanitary napkin was tossed into a river by several girls, it absorbed all the river's water. Therefore, the sole objective of advertising was to tell women about the caliber of the goods. Of course, every lady is aware that this is not possible, yet the ad was nonetheless accepted. This doesn't prove that the advertisement was immoral because of the virtue of the good.

⁶ Advertising Ethics: A review.

https://www.researchgate.net/publication/359788144_ADVERTISING_ETHICS_A_REVIEW, (last visited 28 February, 2024)

⁷ Kangan Galhotra, P. K. (2019). A Survey: Unethical Issues in Advertising. *International Journal for Research in Engineering Application & Management (IJREAM)*.

Ethics also depends on what we believe. If the advertisers make the ads on the belief that the customers will understand, persuade them to think, and then act on their ads, then this will lead to positive results and the ad may not be called unethical. But at the same time, if advertisers believe that they can fool their customers by showing any impractical things like just clicking fingers will make your home or office fully furnished or just buying a lottery ticket will make you a millionaire, then this is not going to work out for them and will be called as unethical.

Advertising Ethics - Various Issues

Some of the ethical issues that commonly arise in marketing communications. These issues are critical to understand and address to ensure responsible and ethical marketing practices:

1. **Truth in Advertising:** One of the primary ethical concerns in marketing communication is the accuracy and truthfulness of advertising content. Advertisers should avoid making false claims, exaggerations, or using misleading visuals or testimonials to deceive consumers.⁸

HUL-owned Fair & Lovely gained attention after a commoner voiced displeasure with the brand's promises, which were biased towards those with darker skin tones and prompted a lot of arguments, with people accusing Fair & Lovely of associating beauty with fairness. The company had to change the product's name to Glow & Lovely and take part in various events promoting women's empowerment in order to retain its customers. Similar was Nivea's bio-slim ingredient, which promised to reduce body size with continued use.

2. **Puffery & Hype:** Puffery and hype occur in advertising when subjective rather than objective claims are used. Redbull's catchphrase, "It gives you wings," came under fire from a \$13 billion lawsuit that requested a \$10 payment to each US customer who was dissatisfied with the beverage.⁹
3. **Vulgarity:** Advertisements that are universally criticized for their inappropriateness

⁸ Armstrong, R. W. (1996). The relationship between culture and perception of ethical problems in International Marketing. *Journal of Business Ethics*, 15(11), 1199–1208. <https://doi.org/10.1007/bf00412818>, (last visited 28 February,2024)

⁹ Red Bull settles false advertising case for \$13M. *The National Trial Lawyers*. (n.d.-a). <https://thenationaltriallawyers.org/article/red-bull/>, (last visited 28 February,2024)

have become more prevalent in the modern era of television. Certain companies resort to displaying crude commercials for their products in an attempt to gain a larger consumer base, resulting in a form of low-cost promotion for their offerings. These advertisements often pertain to items such as deodorants and toothpaste.¹⁰

4. **Surrogate Advertising:** This type of advertising is used by businesses that market regulated goods like cigarettes, alcohol, and beverages. The company conceals itself behind a similar product name or promotes an entirely other idea in order to avoid direct advertising of such products.

The Number 1 Yaari of McDowell's is a well-known example of this. It promotes soda and grounds that on friendship. using messages that aren't overtly labelled as ads but are included into a plot.

5. **Privacy and Data Protection:** The collection and use of consumer data for targeted marketing raise significant ethical questions. Marketers should obtain informed consent for data collection, handle personal information securely, and respect individuals' privacy rights.
6. **Stereotyping and Discrimination:** The most vulnerable segment of society is frequently exploited by narrow-minded advertisers that portray women's modesty negatively, mostly in deodorant and condom advertising, harming women's reputations in general.

Such advertising reinforces negative preconceptions, which helps promote sexism in society. In the Axe effect, popularised by Axe advertising, a man using deodorant was shown luring women with his aroma in Axe advertising.¹¹ The company was forced to take the advertising off the air and make a promise never to employ swooning women in advertisements once more.

7. **Manipulative Techniques:** Some marketing tactics may be seen as manipulative or

¹⁰ Advertising ethics. (2012). SAGE Brief Guide to Business Ethics, 323–337. <https://doi.org/10.4135/9781452243979.n36>, (last visited 28 February,2024)

¹¹ McManis, S. (2007, December 4). Amusing or offensive, axe ads show that sexism sells. The Seattle Times. <https://www.seattletimes.com/life/lifestyle/amusing-or-offensive-axe-ads-show-that-sexism-sells/>, (last visited 28 February, 2024)

coercive, exploiting consumer vulnerabilities or emotions. Ethical concerns arise when marketing messages intentionally create fear, insecurity, or anxiety to sell products.

8. **Children as Target Audiences:** Marketing to children can be ethically challenging. Advertisers should be cautious when targeting minors, ensuring that content is age-appropriate and not manipulative or exploitative.

The Young Persons (Harmful Publications) Act of 1956¹² forbids the promotion of any publication that tends to corrupt children (people under the age of 18) by inciting or encouraging them to commit crimes, acts of violence or cruelty, or in any other way.

9. **Competitive Practices:** Unethical competitive practices, such as spreading false information about competitors or engaging in predatory pricing, can harm both competitors and consumers. Adhering to fair competition principles is essential.
10. **Influencer Marketing:** Collaborations with influencers have ethical dimensions. It's important to ensure that influencers disclose paid partnerships and that their recommendations align with ethical standards.
11. **Customer Reviews and Testimonials:** Fabricating or manipulating customer reviews and testimonials is unethical. Marketers should ensure that reviews accurately reflect genuine customer experiences.

ADVERTISING REGULATION – INDIAN PERSPECTIVE

Advertising constitutes a fundamental aspect of commercial communication, recognized by the Supreme Court as protected speech under Article 19(1)(a) of the Indian Constitution.¹³ Without advertising, numerous businesses would face closure, leading to unemployment and economic instability. Serving as a form of mass communication, advertising encompasses various strategies such as publicity, sales promotion, and public relations, effectively delivering persuasive messages at minimal expense. It combines marketing principles with sales concepts to convey compelling messages to consumers.

¹² The Young Persons (Harmful Publications) Act of 1956, s3

¹³ I NDIA CONST, art19, cl.1(b)

There exist various legislative regulations governing different aspects of advertising, but no single comprehensive set of laws covers every facet. Instead, India, like many other countries, favors self-regulatory mechanisms in the advertising industry. Self-regulation entails adhering to standards and codes that define ethical and professional conduct in advertising. These codes are established by entities such as the Advertising Standards Council of India (ASCI), the Advertising Agencies Association of India (AAAI), the Indian Newspaper Society (INS), and Doordarshan. They serve as guidelines for advertisers, advertising agencies, government entities, publications, and the media, promoting responsible advertising practices.

The Advertising Standards Council of India

Established in 1985, the Advertising Standards Council of India (ASCI) is dedicated to the cause of self-regulation in advertising, assuring the protection of consumer interests. Advertisers, Advertising Agencies, Media (including Broadcasters and the Press), and other parties like PR Agencies, Market Research Companies, etc., all contributed to the formation of ASCI.¹⁴ The Consumer Complaints Council is the heart of ASCI. The hard work of this group of well-respected individuals has greatly accelerated ASCI's efforts and the drive toward self-regulation in the advertising industry.

Under Section 25 of the Indian Companies Act¹⁵, ASCI is a voluntary self-regulation council that has been registered as a not-for-profit organization. Advertisers, media, advertising agencies, and other professional / supplementary services related to advertising practices make up the sponsors of ASCI, which are also its primary members. These firms enjoy great reputation within the Indian advertising industry. ASCI does not create regulations for the general public or pertinent businesses, nor is it a government agency.

ASCI Codes

An Advertising Self-Regulation Code was adopted by the Advertising Standards Council of India (ASCI) in 1985. It represents a dedication to truthful advertising and to competitiveness that is in the marketplace. It stands for the defence of the rights of consumers, and everyone

¹⁴ The ASCI code - advertising standards council of India. ASCI. (2023, August 18). <https://www.ascionline.in/the-asci-code/>, (last visited 28 February,2024)

¹⁵ Indian Companies Act, 2013, § 25, No.18, Acts of Parliament, 2013 (India)

involved in the advertising industry, including advertisers, media outlets, advertising agencies, and other parties who assist in the design or placement of commercials.

The Code's goal is to regulate advertising material, not to prevent people from buying things that some may find objectionable for whatever reason. Therefore, there won't often be a reason to object to them under the terms of this Code, provided that the marketing for such products are not in themselves offensive.

ASCI has a single overarching objective:

To maintain and preserve the public's trust in advertising. ASCI seek to ensure that advertisements conform to its Code for Self-Regulation which requires advertisements to be:

Truthful and honest representation

The regulations governing truthfulness and honesty in advertising in India are comprehensive and stringent. Advertisements are required to be entirely truthful, ensuring that all descriptions, claims, and comparisons based on objective facts can be substantiated when called upon by The Advertising Standards Council of India (ASCI). Advertisements must also refrain from referencing individuals, firms, or institutions without permission, which could confer unjust advantages on the product or bring them into ridicule or disrepute, and explicit permission must be produced upon request by ASCI.

Moreover, advertisements are strictly prohibited from distorting facts, misleading consumers through implications or omissions, or containing statements or visuals that directly or indirectly mislead consumers about the product, the advertiser, or any other product or advertiser. These regulations aim to prevent advertisements from abusing consumers' trust, exploiting their lack of experience or knowledge, or making exaggerated claims that could lead to widespread disappointment. Overall, these guidelines emphasize the importance of honesty, transparency, and responsible advertising practices to protect consumers and maintain the integrity of advertising in India.

Non-offensive to public

To make sure that marketing doesn't violate universally recognized norms of decency. Nothing offensive that is likely to cause serious and widespread offense in view of commonly accepted

norms of decency and propriety should be used in advertisements, especially when depicting women.

Against harmful products / situations

The regulations governing advertising in India also aim to safeguard against the indiscriminate use of advertising, particularly in situations where the promotion of hazardous or harmful products poses risks to society and individuals, especially children. To achieve this, certain types of advertisements are strictly prohibited. Advertisements are not allowed to incite people to commit crimes, promote disorder, violence, or intolerance. They must refrain from deriding individuals or groups based on various factors such as race, religion, gender, age, or nationality. Furthermore, advertisements should not portray criminal activities as desirable or indirectly encourage people, especially children, to imitate them or reveal the methods of committing crimes. Additionally, advertisements must not adversely affect friendly relations with foreign states.

Specifically concerning children, advertisements addressed to them must avoid any content, whether in visuals or otherwise, that could result in physical, mental, or moral harm to children or exploit their vulnerability. These regulations underscore the responsibility of advertisers to ensure that their messages do not encourage harmful behaviors, discrimination, or any content that may adversely affect society, particularly children. They prioritize the well-being and protection of individuals, especially vulnerable groups, from harmful advertising practices.

Fair in Competition

These advertising regulations in India aim to ensure fairness in competition and protect the interests of consumers by promoting informed choices in the marketplace. Advertisements that involve comparisons with other manufacturers, suppliers, or products are permitted, provided they adhere to specific guidelines. Firstly, it should be clear which aspects of the advertiser's product are being compared to the competitors. The subject matter of comparison should not create an artificial advantage for the advertiser or mislead consumers into thinking they are getting a better deal than they actually are. Comparisons should be factual, accurate, and substantiable, without the likelihood of misleading consumers.

Regarding matters covered by these regulations, complaints of plagiarism of advertisements

released abroad will only be considered if the complaint is filed within 12 months of the first widespread circulation of the disputed advertisement and is substantiated with evidence of prior invention or usage abroad. These regulations underscore the importance of maintaining fairness in competition, protecting the integrity of advertising, and ensuring consumers are well-informed when making choices in the marketplace.

LAWS AND ACT GOVERNING ADVERTISEMENT

Advertising in India has evolved significantly, moving from traditional methods like Doordarshan and Prasar Bharti to the modern television channels and media platforms. However, the rise in misuse of advertising practices, such as promoting prohibited medicines and alcohol, has prompted the government to enact various laws to regulate such advertisements.¹⁶ These legislations aimed at controlling misleading advertisements include:

- **CONSUMER PROTECTION ACT, 1986 AND ADVERTISING:** Section 6 of this legislation highlights the entitlement to furnish details regarding attributes like quality, quantity, potency, purity, and others to prevent unjust trade behaviors. Section 2(r) of the act outlines unfair trade practices, which include misleading advertisements and deceptive enticements.
- **CABLE TELEVISION REGULATIONS ACT, 1995, CABLE TELEVISION AMENDMENT ACT, 2006:** SECTION 6 OF THIS LEGISLATION PROHIBITS THE BROADCASTING OF ADVERTISEMENTS VIA CABLE SERVICES UNLESS THEY ADHERE TO THE ADVERTISEMENT CODE. RULE 7 GUARANTEES THAT THE ADVERTISEMENT CODE RESPECTS MORAL STANDARDS, DECENCY, AND RELIGIOUS SENSITIVITIES.
- **RESTRICTIONS ON ADVERTISING UNDER THE CIGARETTE AND TOBACCO ACT, 2003:** Section 5 of this act bans both direct and indirect advertisements of tobacco products in all forms of audio and visual media.
- **ADVERTISING REGULATIONS UNDER THE DRUG AND MAGIC REMEDIES ACT, 1954, AND DRUGS AND COSMETIC ACT, 1940:** Section 29 imposes penalties on those who misuse the

¹⁶ Advertising Laws in India. (n.d.). *legaldesire.com*. September 18, 2023, <https://legaldesire.com/advertising-laws-in-india/>, (last visited 28 February,2024)

Central Drugs Laboratory's test or analysis reports for drug advertising. The punishment can include fines of up to five hundred rupees and imprisonment for up to 10 years.

- ***ADVERTISING RESTRICTIONS UNDER THE PRENATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994, AND YOUNG PERSON (HARMFUL PUBLICATION ACT, 1956)***: These laws forbid advertising associated with prenatal sex determination and harmful publications. Penalties are outlined in Section 3 of the Young Person Act for creating such detrimental publications.
- ***THE INDIAN PENAL CODE AND CRIMINALITY OF ADVERTISEMENT***: Advertising related to offenses, contract killings, incitement of violence, and terrorism is illegal and subject to punishment under the Indian Penal Code.
- ***TRANSPLANTATION OF HUMAN ORGANS ACT, 1994***: This act prohibits any publication or advertising related to human organs and regulates their evaluation, stockpiling, and transplantation.

Case study

Colgate-Palmolive (India) Ltd: The television advertisement asserting that "Colgate Strong Teeth Ab Amino Shakti ke saath. Yeh daaton ka natural Calcium badhane mein madat kare aur danth banaye ander se strong" was found to be deceptive. In the commercial, a demonstration compared untreated chalk to chalk treated with the advertised product. While the advertiser provided videos of similar demos with competitor brands, they failed to conduct this test for their own old and new products. Additionally, the disclaimer in the advertisement mentioned that the demo was conducted in a controlled lab environment. The depiction of chalk crumbling in the lab test was considered inaccurate in representing enamel structure and its reaction to acid, as teeth should not be expected to behave like inorganic and non-living substances like chalk. Regarding the claim "Andar se strong," the advertiser relied on a previous complaint's recommendation, which stated that the data presented by the advertiser only pertained to the outer portion of the enamel layer, constituting a mere 1/200th of the tooth's depth. This implied that the toothpaste does not actually add or enhance natural calcium from within the tooth. The claim was also regarded as misleading due to exaggeration, omission, and implication. Furthermore, the disclaimers on the product packaging and in the TVC did not align with ASCI's guidelines for disclaimers. The product packaging featured two distinct claims, "Amino

Shakti" and "Adds Natural Calcium." While "Amino Shakti" was a coined term referring to a unique formula containing Arginine, the disclaimer was only present on one panel and in small, barely legible print. The claim "Strengthens Teeth from Within" was also inadequately noticeable on the product packaging. Additionally, the TVC's claim, demonstrated through the crumbling of untreated chalk's inability to withstand acid compared to chalk treated with the product, was deemed exaggerated.

Hindustan Unilever Ltd – Indulekha Neemraj Oil: The YouTube advertisement made the claim, "Cures Dandruff Grows New Hair," accompanied by a disclaimer stating, "Based on Clinical test conducted by independent CRO in 2016-17 and 2018-2019." Upon reviewing the YouTube banner advertisement screenshots, examining the complaint details, and considering the advertiser's reasoning for supporting the claim, the FTCP took note of observations from a technical expert regarding the data referenced by both parties, including the underlying causes of dandruff and various treatment options available.

The clinical study conducted over 31 days assessed the product's external use in providing relief from dandruff. The advertiser argued that they were not asserting a cure for "Darunaka" but rather claiming a "dandruff cure." However, the FTCP disagreed with the advertiser's stance, as they had made a broad claim that the product could cure dandruff, suggesting a permanent effect for all users. The term "cure" typically relates to the ailment itself, not just its symptoms.¹⁷ While external-use products can alleviate symptoms, in this context, using the term "cure" was considered misleading. As a result, the FTCP concluded that the claim "Cures Dandruff" lacked sufficient substantiation and was misleading due to exaggeration.

Dabur India Ltd – Dabur Red Toothpaste: The television, YouTube, and Twitter advertisements featuring the claim "better safai than the white toothpaste category" was found to be misleading. This assertion was based on the supposed benefits of an antioxidant ingredient and supported by limited in vitro studies. The claim regarding "cleaning" did not demonstrate a significant difference from regular toothpaste and lacked substantiation. Additionally, the disclaimers in the advertisement did not comply with ASCI Guidelines for Advertising Disclaimers on size, contrast, and legibility.

The advertiser had chosen narrow parameters in their in vitro studies to prove superiority over

¹⁷ Hindustan Unilever Ltd. v. Emami Ltd., 2022 SCC OnLine Cal 1489.

white toothpaste, but they admitted that this effect was not long-term or residual, and toxins continued to generate in the mouth (teeth and gums). Moreover, the advertisement used the term "toxins," with the comparative tests focusing only on free radicals. The advertiser acknowledged that some other white toothpaste might also possess similar antioxidant activity, which they had not verified. Consequently, the disclaimer stating, "Bazaar mein dusre marketed ayurvedic aur herbal toothpaste bhi free radical ko vifal kar sakte hain," invalidated their claim of superiority over white toothpaste.¹⁸

Furthermore, the advertiser had not definitively proven the superiority of their product over the market leader¹⁹ (Colgate) or any other white toothpaste in an "in vivo" situation. The images in the advertisement suggested a side-by-side comparison, indicating the removal of toxins from teeth in the "White toothpaste" section. However, this claim lacked substantiation as the antioxidant activity of herbal ingredients had not been conclusively extrapolated to real-life situations. Therefore, the comparison to the White toothpaste category was deemed inadequately supported. The claim was misleading due to ambiguity and implication and denigrated the entire category of White toothpaste²⁰

Samsung Electronics India Pvt Ltd.: The Twitter advertisement by Advertisers India featured the symbol '5G' alongside the term "GalaxyS20." However, it was noted that the 5G variant of the product is not available in India. This led the CCC to deem the Twitter post as misleading, particularly by implication. The CCC did not concur with the advertiser's argument that the mere use of "#" automatically generates the "5G emoji symbol." It was clarified that Twitter post content can be customized by the Twitter handle itself, ensuring the appropriate hashtag is selected from the outset.

Additionally, the CCC took note of the disclaimer included in the YouTube and Facebook communications, stating that "5G network compatibility is available in limited territories only. In India, products are 4G compatible" and/or "5G variant is not available in India." Despite these disclaimers, the CCC considered the mention of 5G in the Twitter post's copy as false

¹⁸ The Thin Line Between Comparative Advertisement and Product Disparagement, 4 CMET (2017) 20

¹⁹ Hindustan Lever Ltd. v. Colgate Palmolive (I) Ltd., (1998) 1 SCC 720

²⁰ Afaqs. (n.d.). From ASCI upholds 257 complaints of misleading ads in June and July: : Best media info. [www.bestmediainfo.com. https://bestmediainfo.com/2020/10/asci-upholds-257-complaints-of-misleading-ads-in-june-and-july-2020](https://bestmediainfo.com/2020/10/asci-upholds-257-complaints-of-misleading-ads-in-june-and-july-2020) (Last visited 1 March, 2024)

and misleading. This was especially significant given that 5G variants are indeed unavailable in India, a fact acknowledged by the advertiser.

Amity University: The TV commercials for Amity University's online MBA program failed to provide sufficient evidence to support their claims. The assertion that "Amity University online MBA has been ranked No 1 in Asia" lacked substantiation because the advertiser did not furnish necessary documents, details about the award process, criteria, survey methods, parameters, questionnaires, participating universities, survey results, or information about the awarding organizations. Similarly, the claim of being "India's No.1 choice for online education" was not backed by verifiable comparative data against other universities offering online education or independent third-party validation.²¹ The advertisement also did not specify the source of these claims. Furthermore, the advertisement violated guidelines related to using awards and rankings in advertising and the ASCI guidelines for disclaimers in advertising.

Legal Responses to Unethical Marketing

Regulatory Frameworks and Enforcement Mechanisms

Regulatory frameworks pertaining to marketing ethics serve as the foundation for ensuring fair and transparent practices within the industry. These frameworks are designed to safeguard consumer interests, promote competition, and maintain trust in the marketplace. While specific regulations may vary, they often share common objectives aimed at preventing deceptive or harmful marketing practices.

In the United States, the Federal Trade Commission (FTC) holds primary responsibility for regulating advertising and marketing practices. The FTC's authority stems from laws such as the Federal Trade Commission Act, which prohibit unfair or deceptive acts or practices in commerce. Under this Act, the FTC has the power to investigate complaints, issue warnings or orders, impose fines, and initiate legal proceedings against violators. The FTC employs a combination of proactive monitoring and reactive enforcement to ensure compliance with advertising regulations. This includes monitoring advertising claims, scrutinizing

²¹ Bhardwa, R. (2015, October 7). EduLegal Times . From Advertising Council bans misleading Ads of 22 Educational Institutions: <https://edulegaltimes.wordpress.com/2015/10/07/advertising-council-bans-misleading-ads-of-22-educational-institutions/> (Last visited 1 March, 2024).

endorsements, and testimonials, and investigating deceptive pricing practices.

In addition to governmental oversight, self-regulatory bodies within industries also play a significant role in enforcing ethical standards. For example, in the UK, the Advertising Standards Authority (ASA) is an independent organization responsible for regulating advertising content across various media channels. The ASA operates a self-regulatory system where companies voluntarily adhere to the Advertising Codes, which set out rules for responsible advertising. The ASA has the authority to investigate complaints, adjudicate disputes, and require companies to amend or withdraw misleading advertisements. Through this self-regulatory framework, the ASA contributes to maintaining high standards of advertising ethics and protecting consumers from deceptive marketing practices. However, despite the existence of regulatory frameworks and enforcement mechanisms, challenges persist in effectively addressing unethical marketing practices. One challenge is the rapid evolution of digital marketing platforms and technologies, which present new opportunities for deceptive practices such as native advertising, influencer marketing, and online behavioral targeting. Regulators must adapt their approaches to address these emerging challenges and ensure that existing regulations remain relevant in the digital age. Furthermore, the global nature of marketing activities poses challenges for regulatory enforcement, as companies often operate across multiple jurisdictions with varying regulatory standards. Achieving international cooperation and harmonization of regulatory frameworks is essential to address cross-border marketing practices effectively.

Effectiveness and Challenges of legal responses to unethical marketing practices:

1. Effectiveness of Legal Responses:

- **Deterrence:** Legal actions serve as a deterrent against unethical marketing practices by imposing penalties and sanctions on violators. Fines, injunctions, and other punitive measures send a strong message to companies that engaging in deceptive or harmful marketing can result in significant financial and reputational consequences. This deterrent effect can discourage companies from engaging in unethical behavior and incentivize compliance with regulatory standards.
- **Consumer Protection:** Legal responses to unethical marketing aim to protect consumers from deceptive practices and ensure that they have accurate information to make informed

purchasing decisions. By holding companies accountable for false or misleading advertising claims, legal actions help safeguard consumer interests and promote transparency in the marketplace. Consumers benefit from improved trust and confidence in products and brands, leading to more meaningful and mutually beneficial relationships between businesses and consumers.

- **Industry Accountability:** Legal actions against unethical marketing practices also hold the marketing industry accountable for maintaining ethical standards and upholding professional integrity. High-profile cases and enforcement actions serve as a reminder to industry players that ethical conduct is essential for maintaining public trust and credibility. This accountability fosters a culture of compliance and encourages companies to adopt responsible marketing practices that prioritize consumer welfare and social responsibility.

2. Challenges of Legal Responses:

- **Complexity of Regulations:** Regulatory frameworks governing marketing ethics can be complex and subject to interpretation, making it challenging for businesses to navigate compliance requirements. Different jurisdictions may have varying regulations and enforcement priorities, leading to inconsistencies in legal standards across regions. This complexity can create compliance burdens for businesses, particularly small and medium-sized enterprises (SMEs) with limited resources to understand and comply with regulatory obligations.
- **Evolving Marketing Practices:** The rapid evolution of marketing practices, especially in the digital realm, presents challenges for regulators in keeping pace with emerging trends and technologies. New forms of marketing, such as influencer marketing, native advertising, and personalized targeting, raise questions about how existing regulations apply to novel advertising formats. Regulators must adapt legal frameworks to address evolving marketing practices while maintaining the efficacy and relevance of regulatory standards.
- **Enforcement and Resource Constraints:** Effective enforcement of regulatory frameworks requires sufficient resources, expertise, and cooperation among regulatory agencies and industry stakeholders. However, resource constraints and competing priorities may limit the capacity of regulatory bodies to monitor and enforce compliance effectively.

Additionally, the global nature of marketing activities can pose challenges for cross-border enforcement, as regulatory authorities may lack jurisdiction or face logistical barriers in pursuing legal actions against multinational companies operating in multiple jurisdictions.

- **Technological Challenges:** Technological advancements, such as automated marketing systems, data analytics, and artificial intelligence, introduce complexities in monitoring and regulating marketing activities. Issues such as algorithmic bias, data privacy violations, and online misinformation present new challenges for regulators in ensuring ethical conduct in marketing practices. Regulators must adapt their approaches to address these technological challenges and leverage innovative solutions to enhance regulatory compliance and enforcement effectiveness.

Case studies of legal actions against unethical marketing practices:

1. FTC's Enforcement Actions Against Deceptive Advertising:

The Federal Trade Commission (FTC) in the US has a long history of taking legal actions against companies engaged in deceptive advertising practices. One notable case study involves the dietary supplement industry, where the FTC has targeted companies making false or unsubstantiated claims about product efficacy.

Case Study: In 2014, the FTC settled a case with a dietary supplement company that marketed its products with false claims of weight loss and fat burning capabilities.²² The company used testimonials and before-and-after photos to promote its products, claiming that consumers could lose significant amounts of weight without diet or exercise. However, the FTC found that the company lacked scientific evidence to support these claims and accused them of deceptive advertising.

Legal Response: As a result of the FTC's investigation, the company agreed to pay a substantial financial settlement and cease making deceptive weight loss claims. The company was required to provide scientific evidence for any future claims about product efficacy and refrain from

²² Federal Trade Commission, <https://www.ftc.gov/news-events/news/press-releases/2014/01/sensa-three-other-marketers-fad-weight-loss-products-settle-ftc-charges-crackdown-deceptive#:~:text=The%20marketers%20of%20Sensa%2C%20who%20exhorted%20consumers%20to,available%20for%20refunds%20to%20consumers%20who%20bought%20Sensa.> (Last visited 1 March 2024)

misrepresenting scientific research or endorsements.

Impact: This case serves as a warning to companies in the dietary supplement industry about the consequences of making false or misleading claims in their marketing materials. The FTC's enforcement actions help protect consumers from deceptive advertising practices and uphold the integrity of the dietary supplement market.

2. GDPR Enforcement Actions Against Data Privacy Violations:

The European Union's General Data Protection Regulation (GDPR) represents a significant legal framework for protecting data privacy rights and regulating the use of personal data in marketing practices. GDPR enforcement actions have targeted companies that violate data privacy and consent requirements, particularly in digital advertising and online marketing activities.

Case Study: In 2019, a multinational technology company faced legal action from European data protection authorities for violating GDPR requirements related to targeted advertising practices.²³ The company was accused of processing personal data without proper consent and failing to provide transparent information about data processing activities to users.²⁴

Legal Response: The data protection authorities initiated an investigation into the company's advertising practices and determined that it had violated GDPR provisions. As a result, the company faced fines amounting to millions of euros and was required to implement corrective measures to ensure compliance with GDPR requirements, including obtaining valid consent for targeted advertising and enhancing transparency in data processing practices.

Impact: This case highlights the significant penalties and reputational damage that companies can face for non-compliance with GDPR regulations related to data privacy in marketing activities. The enforcement actions underscore the importance of respecting consumer privacy rights and adhering to legal obligations in digital marketing practices within the European Union.

²³ Google v CNIL, Case C-507/17

²⁴ Fortra, <https://www.digitalguardian.com/blog/google-fined-57m-data-protection-watchdog-over-gdpr-violations> (last visited 1 March, 2024)

These case studies illustrate the tangible outcomes of legal actions against unethical marketing practices, showcasing the role of regulatory enforcement in holding companies accountable and safeguarding consumer interests. They also emphasize the global impact of regulatory compliance in marketing ethics, as evidenced by the international scope of GDPR enforcement actions.

Conclusion

The study on advertising ethics in India has shed light on the complex and multifaceted landscape of morality in marketing. It is evident that ethical considerations in advertising play a pivotal role in shaping consumer perceptions, brand reputation, and the overall socio-cultural fabric. In India, where diversity and cultural values are paramount, marketers face unique challenges in striking a balance between commercial objectives and ethical responsibilities. The analysis has shown that while there are legal frameworks and industry self-regulation mechanisms in place, there remains a significant gap between what is legally permissible and what is morally acceptable in advertising. Ethical lapses, such as misleading claims, objectification, and cultural insensitivity, have been observed in advertisements across various sectors. These lapses not only erode consumer trust but also have the potential to perpetuate harmful stereotypes and contribute to societal issues. To safeguard our culture, norms, and ethics, stringent regulations against such unethical advertising are imperative, there is an urgent need for effective implementation of advertising regulations in our country.

Suggestions:

- **STRENGTHEN SELF-REGULATION:** Industry bodies, such as the Advertising Standards Council of India (ASCI), should proactively strengthen their self-regulation mechanisms. This includes conducting regular audits of advertisements, imposing stricter penalties for violations, and ensuring that advertisers adhere to ethical guidelines.
- **EDUCATION AND AWARENESS:** There is a need for increased awareness and education on advertising ethics, both within the industry and among consumers. Advertisers should invest in ethics training for their marketing teams, emphasizing the importance of responsible advertising.

- **CONSUMER EMPOWERMENT:** Empowering consumers with the knowledge and tools to identify and report unethical advertising practices is crucial. Initiatives that encourage consumers to voice their concerns and complaints can act as a deterrent to unethical advertising.
- **CULTURAL SENSITIVITY:** Given India's rich cultural diversity, advertisers should exercise caution and cultural sensitivity in their campaigns. Consultation with cultural experts and focus groups can help ensure that advertisements do not offend or reinforce stereotypes.
- **TRANSPARENCY:** Advertisers should practice transparency in their messaging. Clear and honest communication about product attributes, pricing, and potential side effects, among other things, is essential to building and maintaining consumer trust.
- **LEGAL REFORMS:** Policymakers should continually review and update advertising laws to address evolving ethical challenges. Stricter penalties for violations and a streamlined process for addressing complaints can serve as deterrents to unethical advertising practices.
- **COLLABORATION:** Collaboration between government bodies, industry associations, consumer advocacy groups, and the media can help create a more ethical advertising ecosystem. Sharing best practices, conducting joint campaigns on ethics, and fostering dialogue can drive positive change.

Ethics in marketing and advertising are not just matters of compliance but crucial aspects of responsible business practices. The study emphasizes that the Indian advertising landscape needs a paradigm shift towards greater ethical consciousness. By implementing the suggested measures, India can move closer to a marketing environment where creativity and innovation coexist harmoniously with ethics, fostering a more responsible and respectful advertising industry.