
A BIRD'S EYE VIEW OF THE CONSUMER PROTECTION ACT OF 2019 IN COMBATING MISLEADING ADVERTISEMENTS

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ABSTRACT

Advertisement is a vital element in the marketing strategy. Advertising is helpful, certainly, but rather than helping it mostly deceives the consumer. Advertising has a mixed impact on consumers' thought processes and buying decisions. It might be useful at certain times, but it almost demonstrates the things so elegant and necessary, due to this attraction consumers come to a conclusion that this product is their utmost necessity and if he didn't purchase this product, they could miscue a great opportunity. Advertising is mainly intended to endorse a product or service, there is some embellishment in how they acclaim the qualities of the product. Yet, when it travels beyond that and intentionally purports a lie or makes an attempt to fabricate facts so as to mislead the consumer, it becomes aggressive. False and Misleading advertising not only results in negative influence on the well-being of the consumer, but also impacts the social behaviour of the consumer. Its impact is very severe especially on children and young minds as a substantial number of the advertisements in India are focused towards children and the youth. The guidelines issued by the Advertising Standards Council of India guidelines is very finite and has not proved to be extremely prolific to control misleading advertisements.

At the latest, a large number of misleading advertisements have been released in several newspapers and magazines about presumed cures for venereal diseases, stimulants and conditions strange to men and women. Impeccable people get into the trap of false belief because of lack of awareness and not only lose huge amounts of money but also agonize over huge harm and injury to the body. Companies involved in promoting such activities can be a massive threat to society if they remain ignored and deserve terrific restriction and punishment. This research paper focuses to study the effect of misleading advertisements on consumers and the ways to regulate the same with a bird's eye view of the Consumer Protection Act, 2019. The paper also highlights the need for awareness of consumers on their rights so they can shield themselves from being vulnerable to such

misleading advertisements. It furthermore suggests the strategies that can be adopted to combat the same.

Keywords: Advertisement, Misleading, Consumer, Rights, Awareness.

Introduction

“You can fool some of the people all of the time, and all of the people some of the time, but you cannot fool all of the people all of the time.”– Abraham Lincoln

Advertising is playing a vital role in our day to day lives. It generally determines our image and way of life, and it impacts our way of thinking as well as our defiance toward our own selves. Advertising determines what is moral and evil. Advertisement has the capacity to influence consumers, even if they are not aware of it. People are at present dominated by scientific and technological development, which advertising luminously takes advantage of. Advertisements are becoming famous each day. A substantial amount of money is consumed on advertising campaigns, which results in multi-billion-dollar profits for the companies. In the present-day scenario, a person's choices depend on advertisements and they are stimulated by advertisements. Now-a-days everything is promoted, including olive oil, oxen, horses, other livestock, tools, weapons etc. The advertisement landscape is a lively tapestry, endowed with creativity. But inside this vivacious world lies a network of laws and regulations framed to protect consumers¹. Certainly, laws have played a vital role in this fruition, making sure that the advertisements are reasonable, truthful and respectful towards the consumers. They have improved to include novel mediums and technologies with an aim to maintain ethical standards. From print media to influencer digital campaigns, the legislation continues to steer the subtle balance between innovation and consumer protection.

The source of regulating the misleading advertisements has sprung from various sources particularly the Consumer Protection Act, 1986. While the act had merely defined unfair trade practices², the Consumer Protection Act, 2019 has made it fairly unambiguous by defining misleading advertisements³. The novel Act of 2019, constituted the Central Consumer Protection Authority⁴ famously called CCPA to control matters pertaining to consumer rights

¹ S. Ramesh Kumar & Anup Krishnamurthy, Advertising, Brands and Consumer Behaviour, SAGE Publications, Incorporated, 2020.

² Section 2(1)(r) of The Consumer Protection Act, 1986

³ Section 2 (28) of The Consumer Protection Act, 2019

⁴ Section 10 (1) of The Consumer Protection Act, 2019

violations, unfair trade practices, and false or misleading advertisements. The Central Consumer Protection Authority is liable for safeguarding and protecting consumers' rights by providing guidelines for implementation of the several provisions of the Statute. It aids, guards, and enforces consumer rights. The Central Consumer Protection Authority is bestowed with the powers to:

- Conduct investigations;
- Institute complaints/prosecutions;
- Order the recalling of hazardous goods/services;
- Cease trade practices that are unfair and advertisements that are misleading;
- Levy penalties on offenders.

On June 9, 2022, the CCPA of India published Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, with an intention to curb advertisements that are misleading and safeguard the consumers, who may be abused or affected by such advertisements. The Guidelines aim to guarantee that consumers are not being duped by unsubstantiated claims, exaggerated promises, misinformation, and false claims. Such misleading advertisements infringe several consumers' rights such as the right to be informed, the right to choose, and the right to be safeguarded against possibly hazardous products and services.

Objectives of the study

The objective of writing this research paper is as follows-

- To understand how advertisements play a vital role to build consumer intellect.
- To investigate the effect of misleading advertisements on consumers.
- To gain knowledge on the legislative framework particularly the Consumer Protection Act, 2019 and other regulatory mechanism that exists in India protecting the consumers from misleading advertisements that curtail consumer rights through their strategy of advertising.

Research Methodology

The type of methodology is purely doctrinal in nature.

Primary sources:

- The Consumer Protection Act, 2019
- Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 etc.

Secondary sources

- Books, Journals Articles etc.

When an advertisement misleads the consumer?

An advertisement is said to be false if it misleads people, transforms reality and impacts consumer buying behaviour. In several jurisdictions, advertising regulations make it unlawful to use misleading or false advertising. It is illicit to misrepresent the quality of any product, or its concerned specifications connected to its composition, manufacture, price or place of origin. "**False**" connotes the facts that are misrepresented; Untruthful information can result in an improper number of people utilizing the information to make erroneous decisions, but consumers are susceptible to advertising when presented with an inimitable environment.

Examples

1. When a discrete company or product such as a refrigerator makes a claim that "*the refrigerator is the best in the market and maintains vegetables and fruits crisp for 30 days*", if it fails to do so then it can be misleading a consumer.
2. When a detergent advertisement makes a claim that "*it can eliminate any kind of filth such as oil, Greece, etc. in a single wash*", it should be worthy to do so, and the manufacturer of the product should be capable of proving it. Then, it is a flawed statement or a misleading advertisement.

3. If a face cream advertisement makes a claim that their “*cream aids to remove dark spots and also benefits to improve the color of skin*”, and fails to do so, then it is a misleading advertisement etc.

Covid- 19 pandemic and Misleading Advertisements

It is deplorable that few dishonest producers were utilizing consumers' anxiety about Covid-19 to support a numerous baseless claim. In order to influence people to buy a product when covid was at its peak, it seemed that the distinctive tendency in advertising is to somehow link the product to various benefits vis-à-vis Covid. The Advertising Standards Council of India, a voluntary self-regulatory organization, assessed such Covid-related claims of a varied range of products during the financial year 2020–21, including **clothing, paints, air conditioners, fans, laminates, plywood, and floor cleaners**⁵. But only 12 of the claims stated in the 332 advertising that were put to examination for deception could be backed by the manufacturer enumerating the prevalence of deception. An expert is mandated to evaluate the claim critically so as to confirm its authenticity. The possible course of action for the consumer to notify the ASCI and law enforcement agencies to all of those false statements.

Legislative Framework for the regulation of Misleading Advertisements in India

As there was an increase in competition, some advertisements started to mislead viewers with a perspective to enhance popularity and sales of the product. An assortment of legislations such as the Drugs and Magic Remedies Objectionable Advertisements Act of 1954, the Prevention of Food Adulteration Act of 1954, the Trade and Merchandise Marks Act, 1958 came into effect to afford regulations towards misleading advertisements⁶. However, the Drugs and Magic Remedies Objectionable Advertisements Act of 1954, became obsolete and did not tackle misleading advertisements or other connected issues. It also did not emphasize on substantial penalties or imprisonment in the path of its infringement. Under the Monopolies and Restrictive Trade Practices Act of 1969 which underlines that disseminating bogus information about goods and services was treated as ‘**Unfair Trade Practices**’. Another provision of the erstwhile Consumer Protection Act of 1986 states that those inexact

⁵ Shubhangi Misra, Toothbrush, paint, AC, plywood can all ‘protect’ against Covid. If you believe these ads, <https://theprint.in/feature/toothbrush-paint-ac-plywood-can-all-protect-against-covid-if-you-believe-these-ads/538891/> Last accessed on 14-10-2024.

⁶ Dr. R. M. Kamble, Laws Governing Advertisement in India: auuAn Overview, International Journal of All Research Education and Scientific Methods (IJARESM), ISSN: 2455-6211, Volume 9, Issue 4, April -2021.

descriptions of goods and services can be treated as trade practices that are unfair. The Cable Television Network Regulation Act and Rule, 1995 was inadequate in the bringing up of an enforcement agency. The Food Safety and Standards Act, 2006 states about misleading advertisements but leaves out corrective advertisements. Notwithstanding the aforesaid legislations, there was lack of regulation on penalties or deterrents for companies that frame or promote misleading advertisements for consumers.

Enactment of the Consumer Protection Act, 2019

Therefore, bringing into place a novel act to shield the consumers on various issues including misleading advertisements became essential. Consequently, the Consumer Protection Act, 2019 came into place to provide great relief to especially consumers who are misled by advertisements. Besides the Consumer Protection Act, the Advertising Standards Council of India (ASCI) and the Ministry of Information and Broadcasting are other regulatory authorities that release guidelines for the regulation of advertisements in India. The Bureau of Indian Standards (Certification) Regulations, 1988 under rules 7(1) (1), (g) & (h) states, deceptive advertisements connected with BIS certification are prohibited. The Competition Commission of India (CCI) has been vested with the authority to investigate and penalize companies who were involving themselves in unfair or deceptive advertising practices.

Establishment of Central Consumer Protection Authority (CCPA)

To regulate various activities including misleading advertisements, Section 10 of the Consumer Protection Act, 2019 grants for the setting up of a Central Consumer Protection Authority, which is an authority at the central level to regulate issues pertaining to the infringement of consumers' rights, unfair trade practices and false or misleading advertisements which are detrimental to the public interest and consumers and also to encourage & guard the rights of consumers as a class. Under the novel act of 2019, the CCPA has an investigation element to conduct an inquiry and investigate the matters pertaining to the infringement of consumer rights, with the Alternative Dispute Resolution system which will result in faster and prompt dispute resolutions. There is rigorous provision under the 2019 statute which deals directly with the punishment and deterrence pertaining the practice of misleading advertisement, which was lacking in erstwhile legislation which states that if the CCPA detects an advertisement to be false, misleading, or injurious to consumer interests or rights, it can order the advertiser or

publisher to discontinue immediately or modify the advertisement⁷. Furthermore, the authority can levy a fine of up to 10 lakh rupees if considered necessary⁸. Besides, such manufacturers shall be punished with imprisonment for a term extending to 2 years and fine extending to 10 lakh rupees, for each ensuing violation, imprisonment extending to 5 years with fine extending to 50 lakh rupees⁹.

The Act portrays on the District Collector powers who may, on a complaint or on a reference made to his/ her good self by the CCPA or the Commissioner of a regional office, conduct an inquiry or investigation into complaints pertaining to infringement of consumers rights as a class, unfair trade practices and false or misleading advertisements, within District Collector's jurisdiction and forward his report to the CCPA or the Commissioner of a regional office, as the issue may relate¹⁰. Section 17 of the statute discusses about the registration of complaints to authorities pertaining to violation of consumer rights or unfair trade practices or false or misleading advertisements which are detrimental to the consumers interest as a class, which may be sent either in writing or in electronic mode, to any one of the officials, particularly, the District Collector or the Commissioner of a regional office or the Central Authority.

Section 18(1)(c) details on the power granted to CCPA where one of the powers is to make sure that false or misleading advertisements is not created of any goods or services which violates the provisions of this Act or the rules or regulations; and section 18(1)(d) confirms that a person shall not involve in the publication of any advertisements which is misleading or false. Section 19(1) portrays power of the CCPA to make a reference to matter for investigation or to other Regulator may, after obtaining any complaint or information or directions from the Central Government or on its Suo motto, conduct or cause to be conducted an initial inquiry as to whether there persist an apparent case of infringement of consumer rights or any unfair trade practices or false or misleading advertisements, by any person, which is detrimental to the interest of the public or to the consumers interest and if it is fulfilled that there occurs to be an apparent matter, it shall cause investigation to be carried by the District- General or by the District Collector.

⁷ Section 21 (1) of The Consumer Protection Act, 2019.

⁸ Section 21 (2) of The Consumer Protection Act, 2019.

⁹ Section 89 of The Consumer Protection Act, 2019.

¹⁰Section 16 of The Consumer Protection Act, 2019.

Powers granted to the Central Consumer Protection Authority to grant penalties and directions against any false or misleading advertisements¹¹:

Where the CCPA is of the satisfaction that any advertisements after investigation are misleading or false and is detrimental to the consumer interest or is in infringement of rights of consumers, it may, by order, furnish directions to the related trader or manufacturer or endorser or advertiser or publisher, as the issue may be, to stop aforesaid advertisement or to alter the same in such way and within prescribed period as may be stated in that order. On the basis of the order issued under sub-section (1), if the CCPA is of the opinion that it is essential to levy a penalty with regard to such misleading or false advertisement, by a manufacturer or an endorser, it may, by order, enforce on manufacturer or endorser a penalty which may extend to ten lakh rupees. The CCPA may, for every ensuing infringement by a manufacturer or endorser, levy a penalty, which may go upto fifty lakh rupees. Where the CCPA deems it required, it may, by order, forbid the endorser of a false or misleading advertisement from endorsing any product or service for a period which may go beyond to one year. The CCPA, for every successive contravention, bans such endorsers from endorsing any product or service for a period which may extend to three years. Where the CCPA after investigation is of the view that any person is found to publish, or is a party to the publication of, a misleading advertisement, it may levy on such a person a penalty which may go beyond ten lakh rupees.

No endorser shall be penalised if he has acted with due meticulousness to test the authenticity of the claims stated in the advertisement pertaining to the product or service that he or she has endorsed. No person shall be accountable to such a penalty if he substantiates that he had published or made arrangements for publishing such advertisement in the usual course of his business. Such a defence shall not be accessible to a person if he had prior information of the order approved by the CCPA for removal or rectification of such advertisement.

Penalty determination under this section, will have due reference to the following factors¹²:

- The population and the area influenced or impacted by such an offence.

¹¹ Section 21 of The Consumer Protection Act, 2019.

¹² Section 21 (7) of The Consumer Protection Act, 2019.

- The occurrence and period of such an offence.
- The susceptibility of the persons as a class likely to be harmfully influenced by such offence and
- The whole income from the sales caused by such an offence.

The CCPA shall grant the person a chance of hearing before an order under this section is issued.

Findings of District Commission¹³ is to publish curative advertisement to compensate the impact of misleading advertisements to the detriment of the other side party liable for publishing such misleading advertisement;

- to grant for adequate costs to the parties; and
- to stop and desist from publishing any misleading advertisement.

Section 89 contains provision for the punishment for false or misleading advertisement which states that any manufacturer or service provider who involves in a false or misleading advertisement to be made which is detrimental to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every ensuing offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022

With a view to safeguard consumer rights against broader advertising issues, the Central Consumer Protection Authority notified the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 in June 2022 with instantaneous enforcement¹⁴. The Guidelines seeks to enhance protection to consumer rights with precise and required conditions for valid and non-misleading advertisements, and free

¹³ Section 39 of The Consumer Protection Act, 2019.

¹⁴ The Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, https://consumeraffairs.nic.in/sites/default/files/CCPA_Notification.pdf.

claims advertisements. Additionally, the Guidelines distinguish and permit bait advertisement on satisfying prescribed conditions, also grant requirements which are obligatory for disclaimers in advertisements, endorsements in advertisements, and disclosure of linking between endorser and trader. The Guidelines also forbid surrogate advertising, and propose restrictions on free claims advertisements and advertisements targeted towards children. The duties of manufacturers, service providers, advertisers and advertising agencies are detailed under the Guidelines.

Landmark Cases on the practice of Misleading Advertising

1. Francis Vadakkan v. The Proprietor, A-One Medical & Ors.

The Kerala District Commission took forth a complaint against a company manufacturing hair growth cream. The company had made an advertisement that *its product would triple the length of the hair in a period of six weeks*. The petitioner, influenced by this advertisement, brought two bottles of the hair growth cream from A-One Medical and utilised it for seven weeks but witnessed no hair growth. He then registered a claim with the district commission asking Rs. 5,00,000 in damages for losses, discomfort and emotive distress. The Commission held that the complainant was persuaded by the advertisement to purchase and utilize the cream as directed but did not gain the promised results. The commission directed the company to recompense the complainant for deficiency in services.

2. Tata Motors. v. Pradipta Kundu¹⁵

The complainant made an allegation that Tata Motors' advertisement claimed the *TATA Indigo CS-Car, would accomplish a mileage of 25km/l, endorsing it as fuel-efficient*. Believing in this, the complainant purchased the car but the ensuing test showed the mileage was lower than advertised, which resulted in a complaint of misleading advertisement. The West Bengal State Consumer Dispute Redressal Commission, discovered that the complainant was lured by the advertisement and confirmed that the car's mileage was below 25km/l in tests and ordered the company to provide damages amounting to Rs. 3.5 lakh for the misleading advertisements. The same decision was upheld by the National Consumer Dispute Redressal Commission.

¹⁵ Revision Petition No. 2133 of 2015, Decided on :02.03.2020.

3. Freedom 251 (Smartphone Scam)¹⁶

A company under the name of “**Ringing Bell**” introduced the Freedom 251 smartphone, creating a feeling with its fake promise of a *completely functional smartphone at a very low price*. The company’s marketing resulted in enormous pre-bookings, but it did not fulfil the orders. Clarifications about its rightfulness surfaced revealing the model was a repackaged Chinese phone. Legal action was initiated against the company and its director for fraud and misrepresentation. The Freedom 251 scam continues to be one of India’s major tech scams due to its false advertising.

4. Havells India Ltd. v. Amritanshu Khaitan

The variation between **comparable advertising, defamatory advertising, and misleading advertising** was made precise by the Delhi High Court. Comparative advertising is advantageous and promoted in the essence of competition, but disparaging advertising is not, and a cause of action must occur in cases of deceptive advertising, it was noted.

5. Nestle India Ltd. v. Union of India and Another¹⁷

The prickly and haughty 2015 Maggi noodles case is a typical illustration of deceptive advertising, false labeling, and prejudicial trade practices. The Consumer Affairs Ministry complained in 2015 to the National Consumer Disputes Redressal Commission over Nestle India's false marketing of Maggi noodles as “**healthy**”. After the Food Safety and Standards Authority of India exposed an undue amount of lead and the existence of MSG (monosodium glutamate) in the samples, considering it “**unsafe and harmful**,” the instant noodles brand Maggi was banned from selling the product. Also, Nestle was charged with infringing rules governing the labeling of the flavor enhancer MSG, and for the maiden, an action under section 12(1)(d) of the Consumer Protection Act was taken through which together the Centre and States have been empowered to register complaints. Damages of Rs 640 crores were levied.

¹⁶ ZeeBiz WebTeam, Scam: Rise and Fall of Freedom 251, the popular smartphone fraud, <https://www.zeebiz.com/trending/news-freedom-251-scam-founder-mohit-goyal-rise-and-fall-of-freedom-251-the-popular-smartphone-fraud-and-conspiracy-who-is-he-the-case-all-you-need-to-know-288046>, Last accessed on 16-10-2024.

¹⁷ Civil Appeal No(s). 14539/2015

Influencers and Celebrities: Misleading Advertisements and Regulations

In the case of *Indian Medical Associations & Anr. v. Union of India & Ors*¹⁸, the Supreme Court stated that influencers and celebrities will be equally accountable and responsible for promoting and endorsing deceiving, false, and misleading information through advertisements, particularly in the class of food and health products.

The "Department of Consumer Affairs, under the Ministry of Consumer Affairs and Public Distribution" on January 20, 2023, put forth recommendations titled "**Endorsement Know-Hows!**"¹⁹ intended for celebrities and influencers endorsing on public platforms. Following which on March 6, 2023, the Ministry of Consumer Affairs, Food & Public Distribution issued guidelines for celebrities, influencers, and virtual influencers on social networking platforms. The goal of the guidelines is to guarantee that individuals, whether celebrities or influencers, do not cheat their audience when endorsing any product or service. The rules furthermore ensures that these individuals comply with the "Consumer Protection Act 2019" other connected laws, rules and guidelines. It also confirms that celebrities and influencers uphold transparency, fairness, and truthfulness with their viewers.

The guidelines also state that celebrities and influencers should make use of words like "**sponsored,**" "**collaboration**" or "**paid promotion**". They are not supposed to endorse any sort of product or service that is not reliable or they have not used personally or gained an experience. The guidelines indeed state that anyone who can have access to an audience or can impact their buying decisions must reveal their relationship, authority, or position with the product. This disclosure must be a component of the endorsement message and should be detailed, protruding, and very hard for the viewers to skip. The disclosure should not be ardent to any set of links, hashtags, or keywords. The declaration should be laid over the images or be suitable for viewers to notice for picture endorsements. The disclosure must be frequently during the streaming live for audio or video endorsements.

¹⁸ Writ Petition (C) No. 645/2022

¹⁹ Department of Consumer Affairs, "Endorsement Know-Hows" For Celebrities, Influencers & Virtual Influencers on Social Media Platforms
https://consumeraffairs.nic.in/sites/default/files/filefield_paths/Endorsement_Know-Hows.pdf

Patanjali advertisement controversy:

Throughout the coronavirus pandemic Patanjali asserted that its medicine “**Coronil**” was effective enough to treat the virus and was the same was certified and approved by the World Health Organization. Later, the WHO repudiated this assertion and disapproved it. Subsequent to this, while offending the medical pharma industry, Patanjali claimed various diseases, stating that its medicines were adequate, better-suited, and could treat them absolutely.

In 2022 Patanjali's clash started, when the company ran a poster titled “*Misconceptions Spread by Allopathy: Save Yourself and the Country from Misconceptions Spread through the Pharma and Medical Industry.*” Patanjali in this advertisement, asserted that its medicines are proven scientifically to treat several illnesses and stated that allopathic medicine has rigorous ramifications. In May 2022, subsequent to this event, the Indian Medical Association issued a 1000 crores defamation notice under Section 499 of Indian Penal Code 1860. Thereafter in August 2022, the Association registered a petition before the Supreme Court with regard to the disparaging advertisement, the apex Court in the initial hearing in November 2023 cautioned and endangered Patanjali against usage of the terms like “*permanent relief*” in the Drugs and Magic Remedies Act, 1954, to advertise its products.

An undertaking was given earlier by Patanjali that they would not circulate such false advertisements in the days to come. The Court recorded the same in its order. Nevertheless, the company persists to release misleading advertisements linked to medicinal treatments. Upon apparent finding that Patanjali had violated the undertaking, the Court published a contempt of court notice for infringement of the order of Court and informed them to register a reply within a period of 2 weeks. The Court also warned them against creating any statements unpleasant to any mode of medicine in any means. The company did not react to the contempt of court notice, on March 19th the Supreme Court served a summons, where Baba Ramdev and Balkrishna were required to appear in person before the Court. Balkrishna, the company's Managing director, issued a clear apology on March 21st.

Baba Ramdev and Balkrishna were cautioned by the Supreme Court about defying the law and admonished them for their “*absolute defiance*” in not attempting to register an appropriate affidavit in retort to the deceptive advertisements on April 2nd in a follow-up hearing. The apex Court discarded their apologies and asked them to afford an affidavit within a week. The

Supreme Court on April 15th, cancelled the manufacturing licenses of 14 products of Patanjali Ayurved Ltd. and Divya Pharmacy under Rule 159(1) of the Drugs and Cosmetics Rules, 1954, with instantaneous effect, and issued an order to the Uttarakhand State Licensing Authority to file an affidavit by April 29th.

The Supreme Court judgment, in this case, is vital since it issued a direction on 7 May 2024 to the Centre to issue a notification to all advertising companies to furnish a self-declaration certificate before broadcasting any kind of advertisement online or in print. Furthermore, celebrities and influencers are held liable equally for encouraging and endorsing misleading advertisements online. This judgment played a key role in tightening the present regulations and arresting diverse huge companies that deceive consumers in the tag of legitimacy. This instance unlocked the entrance for legislators to frame novel rules and guidelines to gear real-world problems and safeguard rights of the consumers²⁰.

Self-Declaration Certificates: A step towards the prevention of Misleading Advertisements

In pursuance of the Higher Court order in the case of **Indian Medical Associations & Anr. v. Union of India & Ors**²¹, the Ministry of Information and Broadcasting, issued a notification to all advertising companies to grant a self-declaration certificate. An Information was passed by the centre to the advertising agencies to upload the self-declaration certificate on the Ministry of Information & Broadcasting's "**Broadcast Seva Portal**"²². The agencies must forward the declaration on the "**Press Council of India's portal**" signed by an authorized representative of the advertisers for print advertising. The agencies must proclaim in the self-declaration certificate that they are not making or promoting any fake assertions about the products or services before releasing them on social media or in the market. They must also state that the certificate of declaration obeys with the rules and regulations of the market, inclusive of "**Rule 7 of the Cable Television Networks Rules, 1994**" and "**The Norms of Journalistic Conduct of the Press Council of India**". This will be a reformative method to foil

²⁰ Krishnadas Rajagopal, The Hindu, Patanjali misleading advertisements: Supreme Court sheaths contempt sword against Ramdev, <https://www.thehindu.com/news/national/patanjali-misleading-advertisements-sc-closes-contempt-proceedings-against-ramdev-patanjali-ayurved-ltd/article68519448.ece>, Last accessed on 16-10-2024.

²¹ Writ Petition (Civil) No. 645 of 2022.

²² In keeping with Hon'ble Prime Minister's vision of Digital India and Ease of Doing Business, the Ministry of Information and Broadcasting provides an efficient and transparent regime for the growth and management of the Broadcast Sector. Broadcast Seva Portal is an effort in that direction. <https://new.broadcastseva.gov.in/digigov-portal-web-app/>.

the market and consumers from being deceived by false or misleading products and also will shield consumers from being entrapped by dishonest, deceptive, or misleading advertisements.

Advertising agencies after June 18, 2024 were required to upload the self-declaration certificate²³. For enduring advertisements, there is no requirement to submit the declaration certificate. In addition to the certificate of declaration, the representative must provide their contact number, email address, advertisement details, a narration of the product or service, the script of the product or service, and in addition to it, if the advertisements are in print form a link to the audio/visual elements of a PDF. They must also notify as to the date of publishing the said advertisements in the declaration certificate. For advertisements certified by the “**Central Board of Film Certification**,” a certificate copy must be submitted with the self-declaration certificate. The stride taken by the Central government in the direction of the Supreme Court will vigour the present regulations, ensure lucidity, genuineness, and fairness in the market, and avert consumers from being deceived by sham products or services through advertisements. It will also make advertising agencies further liable if they are found to be indulging themselves in misleading advertisements.

Consumer Awareness on Misleading Advertisements

The consumer should be cultivated with regard to his rights as a consumer. A consumer should be educated well so that he is skilled to safeguard himself from any unlawful act on the part of the trader. In order to aid consumers to be in such a position, there is a necessity to grant consistent and exhaustive information, which they can refer to without much struggle and expenditure. Of the six fundamental rights guaranteed to consumers²⁴, one vital aspect is the **Right to Information**, which involves being informed about the goods one has an intention to purchase. Yet, when this information is hampered or invitingly false, consumers are basically stripped of their rights. It becomes therefore imperious for consumers to clutch the concept of misleading advertisements. An appropriate relief should be proposed wherever there is a necessity. This is of utmost importance in the rural areas, where there is extensive illiteracy.

²³ <https://new.broadcastseva.gov.in/digigov-portal-web-app/webHP?requestType=ApplicationRH&actionVal=userRegister&screenId=1111&user=9000009>

²⁴ The Court room, Understanding Your Legal Rights as a Consumer in India 2024, <https://thecourtroom.in/understanding-your-legal-rights-as-a-consumer-in-india/>, Last accessed on 16-10-2024.

Suggestions for Combating Misleading Advertisements

- Compliance to industry standards and regulatory guidelines, such as those framed by the ASCI, TRAI, SEBI etc. These benchmarks aid as ideals for ethical advertising practices.
- Brands must launch severe compliance protocols, confirming that all claims are vetted thoroughly for truth and substantiation. This comprises meticulous research, evidence documentation, and review of law to sustain truthfulness and submission with laws.
- Precise and explicit communication is vital. Brands should afford consumers with detailed information, stating advantages, limitations, and risks, guaranteeing trust and bringing down deceptive practices.
- Empowering consumers to differentiate misleading advertisements is key. Public awareness drives, led by legal professionals, can prepare individuals to make informed buying decisions.
- Regulatory bodies play an important role in supervising advertising content and implementing legal standards. Hands-on monitoring and rapid enforcement actions aid as deterrents against misleading practices.
- Collaboration among brands, regulatory bodies, legal experts, and industry stakeholders braces the regulatory framework. Sharing finest practices and acumens improves consumer protection.

Conclusion:

False or misleading advertisements not only betray consumers but also dent fair competition and take away trust in the marketplace. In India, with the enforcement of Consumer Protection Act, 2019 as well the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 severe legal provisions and penalties are in force to discourage such practices and protect consumer interests. Though, ethical considerations are important equally in determining advertising practices and promoting transparency, honesty, and liability in the industry. Advertisers must follow standards that are ethical and comply with legal requirements to confirm that their advertisements are truthful,

accurate, and responsible socially, thereby nurturing consumer trust and confidence in the market scenario. In the ever-developing scenery of consumer protection, laws must adjust to cope up emerging challenges. Predominantly in the digital dominion, where virtual platforms and social media intensify the reach of misleading advertisements, severer regulations are necessary. Amendments concentrating on online platforms can aid as embankments against trickery. The bringing forth of novel regulatory guidelines and compulsory certifications are moving in the correct direction, but actual transformation will require unswerving enforcement and a collaborative endeavour between regulators, industry bodies and consumers. Businesses must understand that transparency, ethical practices and consumer trust are not simply legal requirements but vital ingredients for enduring success. In India for the consumer market to flourish sustainably, safeguarding the interests of its consumers must be kept at the priority warranting that the country's active marketplace remains vivacious, fair and accountable.

“The brands that can connect with clients in a real way will win.”– Gary Vaynerchuk