
UNVEILING DECEPTION: A STUDY OF FALSE AND MISLEADING ADVERTISEMENT ON CONSUMERS IN E-COMMERCE IN INDIA

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ABSTRACT

The rise of e-commerce has revolutionized the way consumers interact with businesses, providing unparalleled convenience and access to a diverse range of products and services. With the convenience of online shopping and the vast array of choices available at the click of a button, e-commerce has undoubtedly enriched the consumer experience. However, this rapid growth has also led to an alarming increase in false and misleading advertisements, which can have significant adverse effects on consumers. These deceptive practices have the potential to erode consumer trust, compromise purchasing decisions, and ultimately undermine the integrity of the e-commerce industry.

This legal research paper underscores the critical importance of effectively addressing false and misleading advertising in e-commerce to uphold consumer trust, promote fair competition, and foster sustainable growth in the digital economy. By shedding light on the legal intricacies and potential areas for improvement, this study aims to provide valuable insights to policymakers, businesses, and consumers alike, fostering a more equitable and trustworthy e-commerce ecosystem.

The purpose of this legal research paper is to examine the impact of false and misleading advertisements on consumers within the context of e-commerce. The study aims to analyze the extent and nature of deceptive advertising practices prevalent in the digital marketplace in India, understand the existing legal framework governing such practices, evaluate its effectiveness, and explore the implications of deceptive advertising on consumers and fair competition.

Keywords: False Advertisement, Misleading Advertisement, Consumers, E-Commerce, Online Shopping

I. INTRODUCTION

In the dynamic realm of e-commerce, the bedrock of its prosperity lies in the principles of transparency, equitable competition, and ethical engagement with consumers. As individuals navigate the intricate web of online marketplaces, their reliance on the veracity and credibility of advertised information becomes paramount in making well-informed decisions. Yet, the unsettling presence of false and deceptive advertisements stands as a disruptive force, distorting the very essence of consumer perception regarding products, services, and offerings. Beyond affecting individual consumers, these misleading practices cast a long shadow of systemic jeopardy upon the broader e-commerce landscape.

The recent release of an exhaustive report by the Advertising Standards Council of India (ASCI) brings into sharp focus the intricate web of manipulative and persuasive strategies woven by advertisers, as expounded in the Paper published on Dark Patterns.¹ This illuminating discourse underscores the potent impact of User Interface (UI) and User Experience (UX) designs on digital platforms, shaping and, at times, manipulating consumer choices and consumption patterns. These insidious tactics encompass a spectrum of actions, including driving consumers to opt for costlier products, embracing undisclosed additional charges, sharing personal data unwittingly, or even making decisions hinged upon falsified or incentivized reviews.²

Within this labyrinthine domain, practices such as drip pricing, beguiling queries, persistent cajoling, covert advertising, and the notorious bait-and-switch technique stand as emblematic manifestations of the pervasive dark patterns prevalent on the digital canvas, as meticulously documented by ASCI.

Highlighting the evolving landscape, it is striking to note that while complaints pertaining to misleading traditional media advertisements have witnessed a decline of 2-4%, the digital realm paints a starkly contrasting narrative with an alarming surge exceeding 50%. This surge is attributed to the evolving technological vista, one that has not only expanded avenues for

¹ Advertising Standards Council of India, *Dark Patterns the new threat to Consumer Protection-Discussion Document* (November 2022)

² David Neild, 'Dark Patterns: The Ways Websites Trick Us Into Giving Up Our Privacy,' <<https://gizmodo.com/dark-patterns-how-websites-are-tricking-you-into-givin-1794734134>>, accessed 7 January, 2025).

communication but also unbarred gateways for the proliferation of misleading advertisements.³

In this context, this paper undertakes a rigorous examination of the labyrinthine issue of false and misleading advertisements within the e-commerce realm in India. By scrutinizing the intricate interplay between consumer psychology, digital design, legal frameworks, and regulatory mechanisms, this study strives to unravel the multifaceted dimensions of this issue. With a concerted effort to illuminate the potential threats, systemic vulnerabilities, and the role of stakeholders, this research contributes to the ongoing discourse surrounding consumer protection, ethical commerce, and the holistic sustenance of a vibrant and trustworthy e-commerce ecosystem.”⁴

This paper delves into the profound impact of deceptive advertising practices on consumers within the realm of E-commerce, exploring the legal framework that governs such practices and the mechanisms in place for consumer protection.

The paper begins by examining the concept of false and misleading advertising in the context of E-commerce, outlining the various forms it may take, such as misleading product claims, fake reviews, hidden fees, and bait-and-switch tactics. The deceptive nature of these practices is explored, illuminating their potential to mislead consumers, erode trust, and compromise their decision-making process.

Subsequently, the paper delves into the legal landscape surrounding false and misleading advertising in E-commerce in India. It investigates the relevant national laws, regulations, and guidelines established to safeguard consumers' rights, including the role of consumer protection agencies and industry-specific watchdogs. Additionally, the study highlights the judicial approach in shaping the advertising laws in E-commerce in India.

Furthermore, this research paper evaluates the effectiveness of current legal mechanisms in addressing the challenges posed by false and misleading advertising. It identifies potential loopholes and enforcement hurdles that may hinder robust consumer protection and advocates for reforms that could enhance the legal framework to keep pace with the evolving nature of

³ Ibid.

⁴ Bestmediainfo Bureau, ‘50 complaints on misleading ads come from digital, says Manisha Kapoor on ASCI’s Dark Patterns paper launch,’ (BestMediaInfo.com, 10 November 2022), <50% complaints on misleading ads come from digital, says Manisha K... (bestmediainfo.com)> accessed 7 January 2025.

E-commerce.

In addition to the legal aspects, the paper examines the broader implications of deceptive advertising on consumers, including the financial losses incurred, psychological impacts, and implications for fair competition among businesses. By understanding the comprehensive ramifications of these practices, policymakers and stakeholders can develop more informed strategies to combat deceptive advertising and safeguard consumer interests in the digital marketplace.

II. HOW BIG IS THE ECOMMERCE MARKET?

According to FIS Global Payments Report, the e-commerce market of India is set to grow from \$83 billion in 2022 to \$150 billion in 2026.⁵ The Unified Payments Interface (UPI) has helped e-commerce account-to-account (A2A) payments grow to \$12 billion, which is up 53 per cent between 2021 and 2022, and digital wallets have also grown from 5 per cent to 35 per cent of POS value. UPI has almost become the default payment option in India. Phil Pomford, General Manager APAC, Worldpay Merchant Solutions at FIS, said: “The success of UPI in India is changing consumers payment preferences faster than anyone could have predicted. UPI gives consumers the ability to transfer funds easily and instantly, 24/7, free of charge, from one bank account to another, and its success shows consumers want more choice, convenience and control at the checkout.”⁶ However, UPI has its own demerits as per the current data protection and IT Frauds redressal mechanisms. Digital payments through Unified Payments Interface (UPI) has become an essential part of daily transactions for many people. This platform, managed by National Payments Corporation of India (NPCI), has made it easier to send and receive money. But, with increasing digital transactions, the risk of UPI fraud has also increased. Phishing scams, UPI PIN scams and money transfer by mistake are some of the cons that are being used to deceive people. Over 95,000 cases of UPI fraud transactions were recorded in India in 2022-23, as per the finance ministry data. This marks a sharp rise from

⁵ ‘FIS Global Payments Report,’ (*FIS Global*), < <https://worldpay.globalpaymentsreport.com/en> > accessed 7 January 2025.

⁶ ‘Account-to-Account Payments Set to Revolutionize Shopping with E-Commerce Payments,’ (*FIS Global, Press Release*, 23 March 2023), < <https://www.fisglobal.com/en/about-us/media-room/press-release/2023/account-to-account-payments-set-to-revolutionize-shopping-with-e-commerce-payments,>> accessed 7 January 2025.

84,000 cases in 2021-22 and 77,000 cases in 2020-21.⁷

Nevertheless, the realm of consumer deception in e-commerce transcends the confines of UPI fraud. A plethora of avenues exist through which consumers are led astray in their everyday online shopping experiences. Among these, the prevalent route is via false and misleading advertisements, which assume diverse manifestations. However, before delving into the intricate tapestry of these forms and techniques, it is imperative to establish a comprehensive understanding of what truly constitutes a misleading advertisement. This foundational comprehension is pivotal to delineating the legislative measures required to fortify consumer protection within the domain of e-commerce platforms.

III. MISLEADING ADVERTISEMENT: UNDERSTANDING THE CONCEPT

Misleading advertisements refer to promotional content that contains false, deceptive, or inaccurate information, which can lead consumers to make decisions based on inaccurate perceptions of a product or service. These advertisements can create a distorted understanding of the features, benefits, quality, pricing, or availability of the promoted products or services. Misleading advertisements can harm consumers by influencing them to purchase items that don't meet their expectations or needs.

A. ADVERTISEMENT V. MISLEADING ADVERTISEMENT

Advertisement is defined under section 2(1) of the Consumer Protection Act, 2019 which states that "*advertisement means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents*".

Advertisement is a protected Fundamental Right under Article 19(1)(a) of the Constitution of India. The Article protects advertisements under Freedom of Speech and Expression and it is a natural corollary to that right of the consumers to be informed and also to have access to information. In *Indian Express Newspaper v. Union of India*, 1986 AIR 515, the Supreme Court

⁷ Navneet Dubey, 'UPI scams on the rise: Here's how you can protect yourself,' (*Business Today*, 30 May 2023), <<https://www.businesstoday.in/tech-today/trending/story/upi-scams-on-the-rise-heres-how-you-can-protect-yourself-383512-2023-05-30>> accessed 7 January 2025.

held that commercial speech is protected under the ambit of free speech and expression under Article 19. In *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd*, 1995 AIR 2438, the Supreme Court noted the right of the consumer as a recipient of commercial speech by stating that the rights of people to hear, read, and receive the speech are protected by Article 19(1)(a), which ensures freedom of speech and expression under Constitution of India. Article 19(1)(a) comes with reasonable restrictions and therefore, anything under the disguise of advertisement cannot be permitted. False and misleading advertisements are not protected.

According to the Advertising Standards Council of India (ASCI) Guidelines on Misleading Advertisements:

*"An advertisement is considered to be misleading if it in any way, including overall presentation, deceives or is likely to deceive the consumers or is in any way harmful or injurious to its users."*⁸

Further, Section 2(28) of the Consumer Protection Act, 2019 defined it as:

"Misleading advertisement means any advertisement, which—

(a) falsely describes such product or service; or

(b) 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

(c) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or

*(d) deliberately conceals important information"*⁹

Section 2(48)(f) also of the Consumer Protection Act, 2019 defined it as a part of the Unfair trade practices, which call it as *"making a false or misleading representation concerning the need for, or the usefulness of, any goods or services."*¹⁰

⁸ Advertising Standards Council of India (ASCI), *ASCI Code Guidelines*, <<https://www.ascionline.in/the-asci-code-guidelines/>> accessed 9 January 2025.

⁹ Consumer Protection Act, 2019, § 2(28).

¹⁰ Consumer Protection Act, 2019, § 2(48)(f).

These definitions serve to underscore the multifaceted nature of misleading advertisements, encompassing aspects like false portrayals, unfounded assurances, deceptive presentations, and intentional omission of pivotal information, all of which significantly impact consumers' ability to make well-informed decisions.

To elucidate the concept further, consider the following illustration:

Imagine stepping into a physical store and setting your eyes on a stunning pair of shoes that immediately captures your desire. However, as you glimpse at the price tag, your enthusiasm plummets – the tag reflects an amount equivalent to your monthly earnings. Disheartened, you return home and embark on an online quest, hoping to find a more reasonable offer for the coveted footwear. Your endeavor proves fruitful as you stumble upon the same pair of shoes, now at an astonishing 70% discount. Encouraged by the apparent bargain, you promptly make a payment through UPI, eagerly anticipating its arrival.

The moment of delivery arrives, but upon receiving the shoes, you discern a perceptible dip in quality. Fearing a potential counterfeit, you promptly visit a local store for verification, only to have your suspicions confirmed – the product is indeed a fake. As you attempt to seek redress, you realize the customer service number is unresponsive, and your emails receive no acknowledgment. Considering a trip to the company's physical location seems impractical, you reluctantly accept the harsh reality that you have fallen victim to a scam.

This instance merely scratches the surface of the myriad ways consumers can be led astray within online platforms. It serves as a poignant reminder that misleading practices can engender significant consequences, underscoring the urgency for comprehensive legislative policies to safeguard consumer interests within the evolving landscape of e-commerce platforms.

IV. TECHNIQUES AND FORMS OF FALSE AND MISLEADING ADVERTISEMENTS

Besides the issue of Counterfeit Goods, Quality Discrepancies or Misleading Product Descriptions, Incorrect Return Policies as highlighted in the instance cited above, there are various other ways a consumer is fooled in the ecommerce websites.

Some e-commerce platforms have even been accused of inflating the original price of products

to make discounts appear more significant. Consumers may think they're getting a great deal when, in reality, the original price was never accurate.

Even if the consumer is cautious enough to check the reviews before ordering something, that is also not going to help much because E-commerce sellers have been known to manipulate product reviews by posting fake positive reviews or paying individuals to write positive feedback, creating a false sense of credibility.

Besides this, most of the e-commerce platforms have been criticized for not delivering products on time or not delivering them at all. Customers may order products based on specific delivery promises, only to be disappointed by the actual service.

Electronic products, such as smartphones and gadgets, are commonly advertised falsely with specifications and features that were different from the actual products they received. For example, you see a beautiful bezel-less phone and only you receive and unbox it you see thick bezels in the same.

Some e-commerce platforms may not fully disclose all costs associated with a purchase, such as shipping fees, taxes, or additional charges, leading to surprise costs during checkout.

Sometimes people don't even realise that the discount they are getting is not even the actual discount. Ecommerce websites display fake discounts during their sale events. Sometimes, the original prices of products are increased before the sale to make the discounts appear larger than they actually were.

There is another technique which is called as a "Bait and switch". This tactic employed by sellers to entice customers into purchasing a higher-priced upgraded version of the initially advertised product. This manoeuvre functions as follows: "A retailer promotes a product at a lower price, creating the impression of a lucrative deal. However, upon visiting the store, the customer is informed about the shortcomings of the advertised item and is instead encouraged to opt for a superior, more expensive alternative. In essence, the store 'baits' the customer with an attractive offer to attract them to the establishment. Subsequently, the sales staff executes the 'switch,' steering the customer towards a higher-priced model that does not benefit from the advertised discount.

A. Issue of Surrogate Advertisements and Influencers marketing in India

According to the advertising expenditure projections presented in March 2018 by Zenith Media, there is an anticipated rise of \$77,000,000,000 (Seventy-Seven Billion United States Dollars Only) in global advertising spending from the year 2017 to 2020. Furthermore, these projections indicate that India is poised to emerge as the fourth-largest contributor to this surge.¹¹

Many celebrities in India, including actors, cricketers, and influencers, have been engaged in influencer marketing. They endorse products on their social media platforms, ranging from beauty products to consumer goods, which can significantly impact consumer choices. Instances have been reported where influencers have promoted products without clearly disclosing that they are being paid for the promotion. This lack of transparency can mislead followers into thinking that the endorsement is based on genuine preference rather than a paid collaboration. Some influencers have been criticized for promoting health and wellness products with unverified or exaggerated claims. They have also promoted cryptocurrencies without adequate knowledge or proper disclaimers, potentially leading their followers into risky investment decisions. This can mislead consumers who trust the influencer's opinions and recommendations.

Most of the times, celebrities also take resort to the Surrogate Advertisements to indirectly promote their products, which are otherwise prohibited from direct advertising due to regulations. Brands like Kingfisher and Royal Challenge have used their logos and slogans in advertisements for their non-alcoholic products like mineral water and soda. E-commerce platforms have become a significant channel for surrogate advertisements, allowing brands to promote their restricted products in a subtle or disguised manner. E-commerce platforms are used by tobacco brands to sell items such as hookahs, hookah flavors, and smoking accessories. These products are not directly tobacco products, but their sale indirectly promotes the tobacco brand. Some have even gone a step further and have promoted Cannabis. While the legal landscape around cannabis-related products is evolving, some e-commerce platforms have hosted advertisements for CBD products or products made from hemp.

¹¹ Adspend Forecasts - March 2018 Executive Summary, (*Published by Zenith Media*, March 2018), <<https://www.zenithmedia.com/wp-content/uploads/2018/03/Adspend-forecasts-March-2018-executive-summary.pdf>> accessed 9 January 2025.

Some e-commerce platforms have featured advertisements or links to mobile apps related to online gaming or betting. These apps might indirectly promote betting or gambling services, which have legal restrictions in some Indian states. Surrogate advertisements related to adult content might promote products or services indirectly connected to adult entertainment, such as subscription services or products associated with the industry.

It's important to note that laws and regulations around surrogate advertisements and restricted products vary in different regions of India, and they are subject to change. E-commerce platforms have been under scrutiny to ensure that they comply with regulations and do not indirectly promote products that are prohibited or restricted by law.

The omission of the "Country of Origin" in product information can be regarded as a form of misleading advertising. In various instances, the absence of this crucial piece of information can lead consumers to form incorrect perceptions about a product's origin, quality, and authenticity. When consumers are not informed about the country of origin, they might assume the product is from a different place or possesses specific attributes that it may not actually have. This omission can distort consumers' purchasing decisions. For example, if a consumer believes they are purchasing a product from a country known for high-quality manufacturing, they might be more inclined to buy it.

These tactics shake the confidence of the consumers, and the question arises as to how can we deal with such advertisements, is there a body where we can complain, if yes what are the legislations and provisions protecting the consumer interests?

V. LEGISLATIVE FRAMEWORK IN INDIA

There is no direct and unified law dealing with false and misleading advertisements in India. They are addressed through various laws and regulatory provisions to protect consumers and ensure fair trade practices. Some of the key laws and provisions relevant to false and misleading advertisements include:

Consumer Protection Act, 2019- The Consumer Protection Act, 2019 came into force to ensure the interests of the consumers. Section 10 of the Act establishes the Central Consumer Protection Authority which looks into the matters of violation of consumer rights, unfair trade practices and false or misleading advertisements that are harmful to the interest of the

consumers. A complaint alleging unfair trade practices or misleading advertisement can be sent to the central authority and investigation is conducted thereon. Where, pursuant to investigation, the Central Consumer Protection Authority is satisfied that the advertisement is false or misleading or in contravention of consumer rights, it has the power to issue direction to the concerned trader/ manufacturer/ endorser/ advertiser/ publisher to either modify the ad or discontinue the same altogether. Further, a penalty extending up to ten lakh rupees may also be imposed upon the errant manufacturer or the endorser. Thus, the Act also holds the endorser, be it a popular celebrity, responsible for unfair trade practices. However, the term 'endorser' is not defined in the Act, but is usually someone who gives the opinion of the worthiness of the product or service. Section 21 of the Act places endorsers at par with the advertisers, celebrities, manufactures and publishers.

All e-commerce businesses are required by law to give customers the information they need to make informed purchases on these platforms, such as country of origin, regarding returning, refundability, exchanges, warranty claims and guaranty, shipment or delivery, payment options, exemption techniques, modes of payment and their reliability, and other topics.

Additionally, it is claimed that e-commerce platforms are required by law to acknowledge any customer complaints received within 48 hours of receipt and to respond to them within a month of that date. This new legislation codifies the idea of liability of a product and gives product dealers, item service providers, including product manufacturers the right to file any kind of damage claims.

The law also streamlines the procedure for settling consumer complaints at the Consumers Commission, which includes – allowing regional and state committees to assess those directives, enabling clients to submit grievances digitally, and enabling clients to file a grievance with a qualified consumer committee on-site. If the accepted dispute is not addressed within the given 21 days, a claim may be made to the consumer commissions and these complaints could be heard through videoconference and considered admissible.

The Act provides for arbitration procedure to allow resolving of conflicts through Mediation. The Consumer Council would complain about mediation if some reservations were done in advance and both parties agreed to it. The Appeal is not allowed from mediation as mediation panel was constituted under the supervision of the Consumer Protection Commission. The

Consumer Protection (General) Rules, 2020 state that there cannot be a fee in situations up to Rs. 5 lakh. The mechanisms for filing procedures digitally and crediting money to the Consumer Welfare Fund so the consumer is unable to be identified (CWF).

The State Commissions provide the Central Government with information on recruitment, disposal of, the status of cases, and other topics quarterly. The older Consumer Protection Act of 1986 only required one factor, which added time, to obtain the right to access justice. The revised Act was released following numerous revisions to provide customers with protection from dishonest merchants and new e-commerce retailers/platforms. The Act will serve as a crucial weapon in defending the nation's consumer rights.

Penalty for Misleading Influencers marketing- The Central Authority further has the power to prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service and in case of contravention, punishment is provided for a period which may extend to one year and up to three years for every subsequent contravention.

Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022- The Department of Consumer Affairs notified the 'Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, on 9 June 2022. The Consumer Protection Act, 2019 which came into force on 2020, had provisions relating to misleading advertisements but it was the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 that provided for rules of valid advertisement and setting the guidelines for businesses if advertisements are compliant. These also specify various types of advertisements such as bait advertisements, surrogate etc.

The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act, 2003 which prohibits such advertisements which are related to the regulation of trade and commerce and production, supply and distribution of cigarettes and other tobacco products. Section 5 of the Act, prohibits the direct advertisement of cigarettes or other tobacco merchandise in form of audio, visual and print media and in contravention of this, person would be punished with imprisonment of two years or fine of INR 1000 or both, which can be extended to five years or fine INR 5000 or both as per Section 22 of the Act. The CTP Act additionally permits

authorized organizations, the power of search, seizure, forfeiture, and confiscation in admiration of any commercial of cigarettes or other tobacco merchandise (Sections 12, 13, 14, and 23 of the CTP Act).

The Advertising Standards Council of India (ASCI) is a self-regulatory and non-statutory body which lays down rules for advertising and ensures ethical practices of advertising is followed. It has laid down ASCI Code. The body seeks to ascertain that the advertisements are decent, truthful and harmless while observing fairness and equity in competition

Insurance Advertisements and Disclosure Regulations, 2021- The Insurance Regulatory Development authority of India(Insurance Advertisements and Disclosure regulations) 2000 is amended in the year 2021 which ensures that insurers adopt fair, honest and transparent practices when issuing advertisements and prevents unfair, misleading advertisements. It assures that the advertisement is relevant, fair and simple to make informed decision. The Product Management Committee is made responsible for approval of advertisements.

Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954- This Act prohibits advertisements that make false claims about drugs and remedies for certain diseases and conditions. It aims to prevent the promotion of quackery and misleading medical claims.

Food Safety and Standards Act, 2006 (Department of Health and Family Welfare)- FSSAI regulates the advertising of food products to ensure that they comply with food safety and labeling standards. Misleading claims or false information related to food products can lead to penalties under the Food Safety and Standards Act, 2006.

The Competition Act, 2002: The Competition Act prohibits unfair trade practices, including false or misleading advertisements that harm competition. The Competition Commission of India (CCI) has the authority to address such practices and impose penalties.

Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994- This Act aims to regulate and prevent the misuse of prenatal diagnostic techniques for sex determination, to prevent female foeticide, and to ensure the safe use of such techniques for medical purposes.

Pharmacy Act, 1948- The Pharmacy Act regulates the profession of pharmacy and the

functioning of pharmacies. It establishes the standards for the education and practice of pharmacists and controls the sale of drugs and medicines.

Prize Competitions Act, 1955- This Act regulates prize competitions and contests in India, ensuring that such competitions are conducted fairly and transparently and that participants are not deceived.

Emblems and Names (Prevention of Improper Use) Act, 1950- The Act aims to prevent the improper use of certain emblems and names for professional and commercial purposes, ensuring that they are not used in a misleading or deceptive manner.

Indecent Representation of Women (Prohibition) Act, 1986- This Act prohibits the indecent representation of women through advertisements, publications, writings, paintings, figures, or in any other manner. It aims to prevent the exploitation of women's dignity and their portrayal in a derogatory manner.

Drugs and Cosmetics Act, 1940- This Act regulates the import, manufacture, distribution, and sale of drugs and cosmetics in India. It aims to ensure that drugs and cosmetics are safe for use and meet the prescribed standards.

Drugs (Control) Act, 1950- The Drugs (Control) Act empowers the central government to regulate the production, supply, and distribution of certain drugs to ensure their availability and prevent their misuse.

Indian Penal Code, 1860 (IPC): In certain cases, false advertising might also lead to criminal liability under provisions related to cheating, fraud, and deception mentioned in the IPC.

These acts collectively contribute to the legal framework for consumer protection, fair trade practices, and regulation of various sectors related to health, commerce, and advertising in India. Each act addresses specific aspects of consumer welfare and ensures that products, services, and advertisements adhere to ethical standards and legal requirements.

VI. JUDICIAL APPROACH TOWARDS FALSE & MISLEADING ADVERTISEMENT

Numerous instances of deceptive advertising on e-commerce platforms have been reported,

leading affected parties to seek recourse through avenues such as the Advertising Standards Council of India (ASCI), Consumer Forums, and judicial proceedings. Several noteworthy cases exemplify the prevalence of such practices:

Online Investing- The case of CoinDCX and CoinSwitch Kuber illustrates the substantial impact of celebrity endorsements on e-commerce platforms. With celebrities like Ranveer Singh and Amitabh Bachchan as brand ambassadors, these cryptocurrency platforms witnessed a remarkable 730% surge in their user base over a mere 10 months. A study by ASCI revealed that 7 out of 10 individuals place trust in advertisements endorsed by celebrities. The implication is that public figures should exercise heightened diligence when endorsing products or services, considering their influence and potential consequences.¹²¹³

In recent events, self-styled investment advisor Gunjan Verma faced penalties of Rs 1 lakh and was mandated to refund her clients for providing unregistered services since 2018, blatantly contravening SEBI regulations.

Similarly, PR Sundar, a financial influencer, incurred SEBI's censure, resulting in a one-year prohibition from trading in the securities market due to comparable infractions. Verma, Sundar, and their counterparts allure investors with promises of significant returns while operating outside legal boundaries, leaving victims grappling with substantial financial setbacks. These cases underscore the escalating menace of financial fraud within the country, serving as a stark reminder that unreservedly following influencers can yield detrimental outcomes.

Influencer Marketing- According to a report released last year, the influence wielded by influencers in India is unveiled, indicating that over 25% of individuals are influenced by their content. Additionally, the report underscores that a significant 60% of consumers are motivated to experiment with products upon receiving endorsements from influencers. This revelation is accompanied by the revelation that consumers, on average, track approximately 7.5 influencers on their social media feeds. Furthermore, nearly 40% of individuals follow more than five influencers. These statistics emphatically underscore the considerable sway and prevalence that

¹² 'Paytm's giant anchor round, alarm over crypto ads,' (Economic Times Morning Dispatch Newsletter, 4 November 2021), <<https://m.economictimes.com/tech/newsletters/morning-dispatch/paytms-giant-anchor-round-alarm-over-crypto-ads/articleshow/87518961.cms>> accessed 11 January 2025.

¹³ ASCI, 'Study on Trust in Advertising', (Published by AICTE), <<https://ascionline.in/images/pdf/asci-study-trust-in-advertising.pdf>> accessed 11 January 2025.

influencers hold in molding consumer conduct, particularly within the realm of e-commerce.¹⁴

In a recent development, on August 26, 2023, the Allahabad High Court took notable action by issuing a notice to the Cabinet Secretary, Rajiv Gauba. The notice pertains to the non-compliance of a prior court order linked to a Public Interest Litigation (PIL). The High Court's earlier directive directed the central government to address the concerns highlighted in the PIL, specifically regarding the engagement of certain recipients of the Padma awards in what the court deemed 'misleading' advertisements. These advertisements were deemed harmful to the health of the general public.¹⁵ This illustrative case serves as a compelling example of the prevalence of misleading endorsements by influencers, underlining the intricate legal landscape surrounding such practices..

Education Sector- The education sector has not remained immune to the impact of misleading advertisements. A landmark judicial decision, with implications for countless students, has emerged in the case involving the renowned Indian Institute of Planning and Management (IIPM). This institution had been falsely asserting to offer an MBA degree accredited by the UGC and AICTE.

A significant ruling was delivered by a division bench comprising Chief Justice G. Rohini and Justice R. S. Endlaw. The judgment not only restrains IIPM and its Dean Arindam Chaudhuri from using terms such as MBA, BBA, Management school, Business School, or B-school in relation to their courses, but it also mandates the institute to prominently display on its website that its courses lack recognition from any statutory body. Furthermore, the directive stipulates that IIPM should provide clear visibility to the status of the foreign university or its degree/certificate within its country of origin. Students enrolling in the courses offered by the institute must be informed about the foreign university's degree/certificate that they would be entitled to upon completing the program.¹⁶

This judicial instance serves as a pivotal example of how legal interventions are crucial to ensure transparency, accuracy, and fairness within the education sector, safeguarding the

¹⁴ 'Like, Share, Subscribe: The Marketing of Influencing,' (Published by Kantar x INCA)<https://436935.fs1.hubspotusercontent-na1.net/hubfs/436935/_APAC_FILES/INCA/%5BKantar%20x%20INCA%5D%20Like%2c%20Share%2c%20Subscribe%20The%20Marketing%20of%20Influencing.pdf> accessed 4 December 2024.

¹⁵ Moti Lal Yadav v. Rajiv Gowba, Cabinet Secy., Central Secrtt. Govt. of India, New Delhi, and Another, *Contempt Application (Civil) No. 2833 of 2023*.

¹⁶ B. Mahesh Sharma v. Union of India, *Writ Petition (Civil) No. 5937/2010, decided on September 26, 2014*.

interests of aspiring students against misleading practices.

Healthcare- Amid the global turmoil caused by the COVID-19 pandemic, a remarkable assertion by an Indian entity has captured widespread attention. Patanjali Ayurved Limited, an Indian consumer conglomerate established by yoga guru Ramdev, has recently asserted the discovery of a 'cure' for the disease. Their medication, named 'Coronil,' has purportedly demonstrated 100 percent efficacy in clinical trials involving COVID-19 patients, with the exception of those reliant on life support systems. This declaration prompted intense discourse until the Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha, and Homoeopathy (AYUSH) interceded, instructing the company to cease advertising the product until a comprehensive examination of the matter is conducted.

In a distinct legal episode, a Public Interest Litigation (PIL) filed by Dr. M. Sivaranjani Santosh, a prominent paediatrician based in Hyderabad, brought forth an issue concerning the non-enforcement of regulations delineated by the Food Safety Standards Authority of India (FSSAI). The PIL contested the authorities' inaction in curbing misleading advertisements pertaining to oral rehydration solution (ORS) substitute products. The PIL underscores the infringement by significant pharmaceutical entities, which commenced promoting and vending ORS products without adhering to the endorsed formula stipulated by the World Health Organization (WHO). These enterprises disseminated inaccurate assertions that diverged from the legal framework. The ensuing confusion among well-intentioned consumers, especially concerning the WHO-approved formula for ORS, adversely affected the health of children, subsequently exacerbating their conditions.¹⁷

Country of Origin- The case pertains to a grievance raised by Akash Kumar, who procured an Usha sewing machine from Paytm in August 2020 for a sum of Rs. 13,440. Upon the arrival of the package, the complainant discovered that the sewing machine was manufactured in Thailand. A crucial detail surfaced – the manufacturer had failed to exhibit the country of origin on the website, a requirement stipulated by Rule 6(5)(d) of the Consumer Protection (E-Commerce) Rules, 2020. The omission of this information led the complainant to erroneously assume that the product was of Indian origin. Notably, the absence of the country of origin disclosure substantially influenced the complainant's decision to purchase the sewing machine.

¹⁷ Dr. Sivaranjani Santosh v. Union of India, *Writ Petition (Public Interest Litigation) No. 91 of 2022*.

In light of these circumstances, the Commission issued directives to Paytm to adhere to the provisions outlined in the Consumer Protection (E-Commerce) Rules, 2020, ensuring accurate and comprehensive product information on their platform. The Commission acknowledged the necessity for rectifying the product information in question.

Furthermore, the Commission adjudged that the actions of the parties involved amounted to deficiency of service and unfair trade practice. As a result, it ordered the opposite parties to disburse compensation of Rs. 15,000 to Advocate Baglekar Akash Kumar, the complainant, recognizing the adverse impact caused by the deficient service and misleading trade practices.

Tech Giants at Fault too: In a distinct scenario, the Competition Commission of India, responding to a reference titled **In Re: Vishal Gupta and Albion InfoTel Limited**, addressed allegations leveled against Google pertaining to its advertising platform. The Commission's evaluation resulted in the dismissal of claims related to unfair business practices, as it concluded that Google's actions did not contravene provisions within the realm of competition law.

Notably, Chairperson D K Sikri expressed a differing perspective through his dissenting opinion. He underscored a pertinent observation—although Google asserts that its advertising platform operates with transparency and equity, it curiously refrains from disclosing the specific process it employs to review advertisements to advertisers.

Numerous other instances of misleading advertisements have garnered regulatory attention, exposing the deceptive practices of various entities. A few notable cases that illustrate the pervasive issue of misleading advertising include:

Flipkart's '100% Original Products' Claims: Flipkart's advertisements, boasting '100% original products' and the slogan 'Flipkart matlab bilkul pakka,' were deemed unsubstantiated and misleading by exaggeration. The claims lacked verifiable evidence and were found to distort reality.

Amazon's 'Unlimited Reading' Offer: Amazon Kindle's promotion of 'Unlimited Reading' came under scrutiny when it was revealed that the 'unlimited offer' was, in fact, limited to 10 books. The discrepancy between the claim and the actual limitation rendered the advertisement misleading.

Misleading OLA Cab Advertisement: OLA Cab's assertion of offering 'OLA Micro @ Rs6/km' was found to be misleading due to omitted information and a lack of substantiation. The pricing claim did not align with the actual terms and was considered deceptive.

Deceptive Offer by Askmebazaar: Askmebazaar's advertisement touting 'Asus Zenfone 2 at Rs 1435' was discovered to be grossly misleading, as the offer did not reflect the actual price or terms accurately.

Simplilearn Solutions' Misrepresentation: Simplilearn Solutions' claim of being the 'world's largest professional certifications company' was determined to be grossly misleading, lacking factual basis and accuracy.

Fantasy Gaming And Gambling Apps: The promotion of fantasy gaming and gambling apps often raises concerns about misleading advertisements. Some platforms might employ exaggerated claims about winning probabilities, prizes, or ease of earning, enticing users to participate. Such advertisements can mislead users about the nature of the activity, potentially leading to unrealistic expectations and financial losses. Users might engage in these activities under false pretenses, believing that their chances of winning are greater than they actually are. This can lead to financial distress, addiction, and negative social consequences.

Tribhuvan v. Facebook India Online Services Pvt. Ltd, ¹⁸ In this case, the complainant discovered an advertisement on his Facebook wall posted by Marya Studio, offering Nike shoes for Rs. 599. Trusting the authenticity of the ad due to its presence on Facebook, the complainant promptly ordered the shoes and made a payment of Rs. 599 using his debit card.

Despite waiting for an extended period, the complainant received no communication from Marya Studio regarding the shipment of the purchased shoes. Faced with the absence of contact details on Facebook, the complainant sought out Marya Studio's customer care number through an online search, which led him to the website www.consumersathi.com. After calling a number listed on the website, a person identifying as a Marya Studio Customer Care Executive engaged with the complainant.

¹⁸ Tribhuvan v. Facebook India Online Services Pvt. Ltd., *Complaint No. CC/117/2020*, decided on June 30, 2022.

The "Customer Care Executive" shared a link with the complainant and instructed him to input his debit card details for a refund. Additionally, the complainant was directed to download the AnyDesk App to facilitate the refund process. Obliging the instructions, the complainant provided the necessary information, including the OTP number, and subsequently fell victim to a fraudulent transaction, resulting in a loss of Rs. 7568.

In an attempt to address the situation, the complainant contacted Facebook through Twitter and email to seek compensation but received no response. Consequently, the complainant approached the District Consumer Disputes Redressal Commission (DCDRC) in Gondia seeking relief against Facebook.

During the proceedings at the DCDRC, the complainant sought directions against Facebook for discontinuing unfair and restrictive trade practices, rectifying misleading advertisements, and neutralizing their adverse effects on the platform. The bench comprising Bhaskar B. Yogi (President) and Sarita B. Raipure (Member) issued directions to Facebook and Meta Inc. These directives included running awareness advertisements on various media platforms to inform users about scams and fraudulent activities. The Commission also emphasized that Facebook bears a legal and social responsibility to offer assistance and guidance to the public regarding online fraud prevention.

VII. IMPLICATIONS OF REGULATORY FRAMEWORK

Post investigation of the current laws and the judicial trend, an administrative experts are required to comprehend misleading advertisements. ASCI has been dealing with complaints relating to misleading advertisements, however, being a self-regulatory body, it lacks providing strict punishment. Therefore, with the weaker framework, it acts as a watchdog to curb misleading advertisements as it does not have any legal authority.

Further, it is believed, that various scattered enactments lead to confusion in providing relief to the consumers from misleading advertisements and presents a doubtful picture with respect to jurisdictions.

The ministry of Consumer Affairs in 2022 adopted the Guidelines for Endorsements and Advertisements in Digital Media by Influencers. Consumers heavily rely on promotions done by influencers on social media channels, but often the lines are blurred when it comes to

genuine digital content or paid promotions done by influencers. Therefore it is imperative that any advertisements promoted by influencers should not mislead consumers in buying products or services. The same year, ASCI issued guidelines for influencer marketing. It mandates a 'disclosure' label on the content such as 'ad, paid, collaboration' which identifies as advertisement. This requirement was necessary to ensure transparency to let consumers check the veracity of the claims made by influencers. The guidelines also require the influencers to conduct their due diligence and satisfy the claims made by advertiser.

In 2023, the Department of Consumer Affairs established the 'Endorsement Know-How' for celebrities, influencers on social media. The purpose is to safeguard the interest of the consumers so that they don't fall prey to the misleading promotions done by celebrities and rules ensures that they are in compliance with Consumer Protection Act or allied rules and regulations.

In addition, as mentioned above, there is no single law for the advertising agency, every sector has different laws. Therefore, it is pertinent to mention that there is an urgent requirement to have a single legislation to deal with myriad issues.

VIII. CONCLUSION & SUGGESTIONS

In light of the escalating influence of advertising in our society and the rapidly evolving industry landscape, it has become evident that the current regulatory framework falls short in effectively overseeing the advertising sector. The pervasive reach of advertisements, spanning from traditional billboards to subtle Instagram posts, has rendered consumers increasingly vulnerable to deceptive practices. Moreover, alongside traditional concerns such as misleading pricing and labeling, modern challenges have emerged, necessitating a comprehensive legal framework to safeguard consumer interests and maintain fair competition.

The pressing need for a unified legal framework to regulate advertising has never been more pronounced. It is imperative for national governments to respond promptly to calls for the codification of robust advertising laws within the Legislative branch. Such legislation should address the multifaceted nature of advertising in the digital age, incorporating provisions to combat deceptive practices and uphold transparency and accountability.

Recent actions by regulatory bodies like the CCPA underscore the importance of proactive

enforcement and issuance of guidelines to tackle misleading advertisements. The issuance of notices and guidelines serves as a critical step towards curbing deceptive advertising practices, providing a benchmark for industry stakeholders to adhere to ethical standards and prevent misleading advertisements.

A significant aspect that deserves attention is the need for clear guidelines on how companies can avoid engaging in misleading advertising practices. The case of *Tribhuvan v. Facebook India Online Services Pvt. Ltd*¹⁹ serves as a pertinent example, highlighting the importance of establishing precedents and standards to guide businesses in their advertising endeavors.

In conclusion, deceptive advertising poses a significant threat to consumer interests and the integrity of e-commerce. To address this challenge effectively, the legal framework governing advertising must undergo continual updates to keep pace with the dynamic nature of digital advertising. Stricter penalties for deceptive practices should be enforced to deter non-compliance and restore trust between consumers and businesses. Collective efforts from regulatory bodies, businesses, and consumers are essential to foster a transparent and trustworthy e-commerce ecosystem, ensuring fair competition and consumer protection.

¹⁹ Tribhuvan v. Facebook India Online Services Pvt. Ltd., *Complaint No. CC/117/2020*, decided on June 30, 2022.