

From Puffery to Penalty: Legal Control of Misleading Advertisements in India

Dr. Shwetha P

Associate Professor

B.M.S College of Law, Bangalore

Abstract: *The old saying is “Consumer is King”; however, today that king is deceived by every other trader. One of the most used deceptive techniques is misleading advertisements. No doubt every other business entity needs to promote its business and maximise its profits, but at what cost? The business entities seem to have believed that the business of the business is only business. They have totally disregarded the duty not to affect the interests of the consumers. The legal framework in India to safeguard the interests of consumers has evolved over a period of a century and has become quite comprehensive through the Consumer Protection Act, 2019. But still the consumers are exploited through misleading advertisements and consumers silently suffer the exploitation. Both the sector-specific enactments and umbrella legislation, like the Consumer Protection Act, 2019, lack effective implementation. The suo moto power conferred on the authorities under different statutes is exercised rarely, and the uninformed individual does not take the trouble of bringing the matter to the notice of the authorities about the misleading advertisements. As a consequence, the business entities continue to adopt the decisive techniques vehemently. Though the Indian judiciary has contributed well to alleviating the sufferings of the consumers, it is not sufficient. Thus, there is a need to analyse the present legal framework to curb the menace of misleading advertisements and find the gaps in the law and suggest remedies to fill the gaps.*

Keywords: Misleading Advertisements, Deceptive Advertisement, Consumer Interest, Suo moto power, Authorities

I. INTRODUCTION

The business of the business is not only the business but also to safeguard the interests of the consumers. The business entities adopt different techniques to promote and expand their businesses. One very effective and essential tool is advertising. An advertisement is a communication tool used to market a brand, product, or service to an audience to generate attention, interaction, and sales. Advertisements are the means to reach the audience. It may be in print media, digital media, or on the internet.

Advertisement is “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”¹

What is a Misleading Advertisement?

Misleading advertisements are advertisements that contain false, deceptive, or incomplete information, leading consumers to make decisions based on inaccurate or misleading information about a product or service.

Over the years, advertising in India has changed significantly. Advertisements have always shown a dynamic consumer market, from vendors utilising loudspeakers in the marketplaces to draw clients to fascinating television ads, striking billboards, and internet marketing. These days, captivating digital ads that show up everywhere on the internet dominate the advertising scene. Advertising, however, is ingrained in our culture and shapes our opinions of companies, goods, and services; it is not simply about making sales. The world of advertisements is nothing less than a creatively



dynamic tapestry. However, there is a complex network of laws and rules in this dynamic society that are intended to safeguard consumers.

Misleading advertising has been defined in Article 2(2) of the European Union Council Directive 84/450 as "any advertising which is in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor."

The Consumer Protection Act, 2019 "Misleading advertisements"¹ as an advertisement that:

- Falsely describes a product or service,
- Gives false guarantees, mislead consumers about its nature, substance, quantity or quality
- Deliberately conceals important information,
- Conveys an express or implied representation, which if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice.

India has seen many court cases involving deceptive advertising for years. The following are some of the instances of misleading advertisements.

Test of Advertising

In order to identify the Deceptive Advertisements Courts and forums have evolved few cases related to deceptive advertisements, to come to the conclusion whether an advertisement is deceptive or not. Some of the most important tests which have been so evolved include:

- Reasonable Person Test
- Impression Test

Reasonable Person Test: The Sacchar Committee in 1978 had endorsed the "average purchaser" standard as a test to determine the character of a trade practice. The apex court in various cases relied on the "reasonable man's intelligence" as a standard to test if there is deception in an advertisement. The court has used the "reasonable man" test to determine if a certain advertisement will be perceived as deceptive or notⁱⁱ.

The Impression Test: The impression test is an offshoot of the reasonable person test and it fine tunes this test. Most people who watch advertisements on the electronic media, such as television, get deeply influenced by it as it effects the psyche of the viewers.ⁱⁱⁱ

Francis Vadakkan v. The Proprietor, A-One Medical & Ors^{iv}

A complainant was filed in Kerala District Commission against the company for producing hair growth cream. The company had advertised that its product would triple the length in just six weeks. The petitioner persuaded by this advertisement, purchased two bottles of the lotion from A-One Medical and used it for seven weeks but saw no hair growth. He then filed a claim with the district commission seeking Rs. 5, 00,000 in damages for losses, pain and emotional distress. The Commission held that the complainant was influenced by the advertisement to buy and use the cream as directed but did not experience the promised results. The company directed the company to pay compensation.

Tata Motors v. Pradipta Kundu^v

The complainant was filed against the Tata Motors against their ' advertisement claiming the TATA Indigo CS-Car, would achieve a mileage of 25km/l, promoting it as fuel-efficient. Based on this, the complainant purchased the car but subsequent test showed the mileage was lower than advertised, leading to a complaint of misleading advertisement.

The West Bengal State Consumer Dispute Redressal Commission, found that the complainant was enticed by the advertisement and confirmed that the car's mileage was below 25km/l in tests and ordered the company to pay damages



amounting to Rs. 3.5 lakh for the misleading advertisements. The same decision was upheld by the National Consumer Dispute Redressal Commission.

Shankar IAS Academy Case^{vi}

The Central Consumer Protection Authority (CCPA) imposed 5 lakh Rupees as a fine on Shankar IAS Academy for misleading advertisements related to the 2022 civil service exam.

The CCPA, found that the coaching institute made false claims about its success rate and the nature of courses taken by the candidates.

The Academy in its advertisement for the 2022 UPSC Civil Service exam, claimed that "336 selections out of 933 at All India Level", "40 candidates in Top 100", and "2 candidates have cleared from Tamil Nadu, of which 37 studied at Shankar IAS Academy". The institute also advertised itself as the "Best IAS Academy in India".

In this case CCPA held that the Shankar IAS Academy "deliberately concealed" information about the specific courses taken by the successful candidates it advertised for.

Amway Nutrilite case^{vii}

A case was filed by The Food Safety and Standard Authority of India (FSSAI) in against Amway in the court of Adjudicating Officer (FSSAI) cum Additional District Magistrate, Gautam Budh Nagar for violating the provision of the Section 24 of the Food Safety and Standards Act 2006 which is related to misleading advertisements - and the Food Safety and Standards (Packing and labelling) Regulations (FSSR), 2011.

The allegation was that the company in its advertisements in newspaper, television and other media for its Nutrilite Daily product stating that "if you are not taking a truly adequate and well balanced diet, the Nutrilite Daily may be a convenient once a day choice for supplemental nutrients you have been looking for". Further the product also claimed that "each tablet supplies 13 vitamins, 11 minerals and phytochemicals plant compound from nutrilite's exclusive plant concentrate. Nutrilite exclusive nutria lock makes tablet easier to swallow.

This claim was found to be misleading as it gave the impression that 'Nutrilite Daily' alone could meet all daily nutritional requirements, which was not scientifically proven. ASCI directed Amway to withdraw or modify the advertisement to accurately reflect the product's benefits.^{viii}

Naaptol Online Shopping Case^{ix}

A Suo Motto case was filed by The Central Consumer Protection Authority (CCPA) against Naaptol for misleading advertisements about magnetic knee supports, acupressure yoga slippers, and instant pain relief for knees, Gold Jewellery. The CCPA made investigations and revealed that the

- Naaptol is failed to disclose that advertisements were pre-recorded due to this there is a creation of false sense of urgency.
- Claiming that the product is available only for certain period.
- Using the term gold for certain Jewellery.

Naaptol was imposed a penalty of Rs 10 lakh and also directed to discontinue the misleading advertisements. The authority also directed Naaptol to redress complaints filed between May 2021 and January 2022.

Reckitt Benckiser (India) Ltd. v. Hindustan Unilever Ltd.^x (2008)

The complaint was filed against Hindustan Unilever Ltd. alleging that its advertisements for Lifebuoy soap made false and misleading claims about the efficacy of Lifebuoy against Detol. The case was heard by the Advertising Standards Council of India (ASCI), which directed Hindustan Unilever to modify its advertisements.

Indiyaa Distribution Network LLP Case^{xi} (2024)

A series of complaint was filed against Indiyaa Distribution Network LLP, a direct-selling firm in Indore for unethical practices. The advertisement said that the oil "makes you fit even without any surgery or physiotherapy and also



claimed it was the “world’s 1st hotstream joint pain relieving oil”, that there was “no parallel to this product in the entire world”, and that “patients get quick relief from joint pain, stiffness, and inflammation”, The firm was imposed a fine of Rs 10 Lakhs for misleading advertisements.

Indian Medical Association v. Union of India^{xii}, popularly known as the ‘Patanjali case’, considered as a landmark case to analyse how misleading advertising is perceived and penalised in India. This case laid down guidelines and set the foundation for effective consumer protection by imposing the liability on the Central and the State governmental bodies to curb misleading advertisements in India.

The petition was filed by the Indian Medical Association, raised the issue of misleading advertisements and their impact on consumer health and safety. The petitioners in this case argued that the Advertisements often made deceptive claims about products, betraying consumers' trust and breaking laws such as the 1940 Drugs and Cosmetics Act and the 2006 Food Safety and Standards Act.

Guideline No. 13 of the 2022 Guidelines states that endorsers, such as influencers and celebrities, frequently lacked sufficient understanding or experience with the things they were endorsing and also highlighted that since 2018, the Ministry of AYUSH and the FSSAI, among other regulatory agencies, have not adequately addressed complaints.

In this case the Court held that the Misleading advertisements directly affect the fundamental right to health, which includes informed consumer choices and also highlighted that the Endorsers, advertisers, and manufacturers are equally responsible for ensuring truthful promotions under Guidelines, 2022.

The Court issued the following guidelines to be followed by the Advertisers in Advertisement.

- Advertisements relating to health must be backed up by reliable clinical research, scientific proof, and verified studies.
- In compliance with relevant regulations, advertisements should truthfully depict the ingredients of products and the health advantages they offer. Any possible adverse effects or contraindications related to the usage of their products must also be disclosed by manufacturers.
- Public personalities or celebrities while advertising must make sure that their support is supported by data and adheres to the Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 (the "2022 Guidelines").
- Advertisers must upload self-declarations on the Ministry's portal before airing advertisements.
- FSSAI and other bodies must publish reports on complaints and actions taken.

The following are the few legislations/ legal provisions against Misleading advertisements

ASCI Code^{xiii}

ASCI, established in 1985, is committed to the cause of self-regulation in advertising, ensuring the protection of the interests of consumers.

ASCI seeks to ensure that advertisements conform to its Code for Self-Regulation, which requires advertisements to be legal, decent, honest and truthful, and not hazardous or harmful.

The objective of the Code is to control the content of advertisements, not to hamper the sale of products which may be found offensive, for whatever reason, by some people. Provided, therefore, that advertisements for such products are not themselves offensive.

The following are basic guidelines for advertising in India:

- Ensure the truthfulness and honesty of representations and claims made by advertisements, and to safeguard against misleading advertisements.
- Ensure that advertisements are not offensive to generally accepted standards of public decency.
- Safeguard against the indiscriminate use of advertising for the promotion of products, which are regarded as hazardous to society or to individuals to a degree, or of a type which is unacceptable to society at large.



- Ensure that advertisements observe fairness in competition so that the consumer's need to be informed of choices in the marketplace and the canons of generally accepted competitive behavior in business is both served.

The Drugs and Cosmetics Act, 1940

Section 29 of the Act Punishes a person who uses the report of a test or analysis made by the Central Drugs Laboratory or by a Government Analyst, or any extract from such report, for the purpose of advertising any drug or cosmetic, shall be punishable with fine which may extend to five thousand rupees.

Drug and Magic Remedies (Objectionable Advertisements) Act 1954

Section 3^{xiv} prohibits the advertisement of certain drugs for treatment of certain diseases and disorders

Section 4^{xv} prohibits misleading advertisements relating to drugs.

Section 5^{xvi} Prohibits advertisement of magic remedies for treatment of certain diseases and disorders

Section 6^{xvii} Prohibits import and export from, India of certain advertisements.

The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

Section 22 Prohibits advertisement relating to pre-conception and pre-natal determination of sex and punishment for contravention.^{xviii}

The Cable Television Network Act of 1995 and the Cable Television Amendment Act of 2006 and Cable Television Network Rules 2006

Section 6 of the Act read with the Rule 7 ensures that the advertisement broadcasted should be in accordance with the Advertisement Code and don not offend Decency, Morality and Religious Sentiments.

The Food Safety and Standards Act, 2006

Section 53 imposes penalty for misleading advertisement^{xix}

The ConsumerProtection Act, 2019

Section 10 of the CPA, 2019, establishes the Central Consumer Protection Authority (CCPA) to oversee issues likes misleading advertisements, with further investigation responsibilities vested with the District Collector under Section 16 of the CPA, 2019.

Section 21 of the CPA, 2019, outlines about the Penalties for Mis leading Advertisements where the Central Authority can direct the modification or discontinuation of such advertisements and impose fines on manufacturers, endorsers or publishers.

Section 89 of the Act lays down that Any manufacturer or service provider who causes a false or misleading advertisement to be made which is prejudicial 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 subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to 50Lakh.

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

The Consumer Protection Authority by utilising the power granted to it under Section 18 of Consumer Protection Act, 2022 issued Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022^{xx}. The Guidelines are in effect from June 10, 2022

The Guidelines apply to all advertisements in any form, format or medium, and to all manufacturers/ service providers/ traders whose goods, product or service are the subject of an advertisement^{xxi}.and to all the Advertising agencies or endorsers who provide services for such advertisements are also covered within the ambit of the Guidelines. The Guidelines prescribe conditions and ingredients for non-misleading and valid advertisements^{xxii}



II. CONCLUSION

Thus, from the preceding discussion, it is concluded that India has evolved a robust multi-layered framework to curb the deceptive practices by business entities. The Consumer Protection Act, 2019, establishes bodies like the Central Consumer Protection Authority (CCPA) with powers to direct modification or discontinuation of misleading ads and impose penalties. However, the Authority has to take *Suo moto* cognisance of the cases involving misleading advertisements, as many individuals lack awareness about what constitutes misleading advertisements. Furthermore, the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, provide a comprehensive set of rules applicable across all advertising forms and to all involved parties, including manufacturers, service providers, advertising agencies, and endorsers. Strict implementation of these rules will make the CCPA a more effective piece of legislation in safeguarding the interests of consumers. Specific sectoral laws, such as the Drugs and Cosmetics Act, 1940, the Drug and Magic Remedies (Objectionable Advertisements) Act 1954, and the Food Safety and Standards Act, 2006, also penalize misleading claims within their respective domains. All the cases of misleading advertisements shall be brought for scrutiny under a single authority instead of sector-specific authorities. However, the judicial pronouncements have played a significant role in shaping enforcement, with landmark cases like *Indian Medical Association v. Union of India* (the 'Patanjali case') emphasising that misleading advertisements, especially concerning health, directly affect basic consumer rights and holding endorsers, advertisers, and manufacturers equally responsible for ensuring truthful promotions. This comprehensive legal and regulatory ecosystem acts as a vital guardian for consumers to ensure transparency and prevent deception, thereby safeguarding informed consumer choices.

REFERENCES

- ⁱ Section 2(1) of the Consumer Protection Act 2019
- ⁱⁱ Available at : <https://theadvocatesleague.in/blogs/view/MISLEADING-ADVERTISEMENTS-AND-THE-LAW-IN-INDIA-hSUE3a.html>
- ⁱⁱⁱ Pepsi Co. Inc. & Ors. v. Hindustan Coca Cola Ltd. & Another; 2003 (27) P.T.C 305 (Del.).
- ^{iv} 2012, CC NO 345.
- ^v Revision Petition No 2133 of 2015
- ^{vi} Available at : <https://www.indiatoday.in/india/story/ccpa-fine-shankar-ias-academy-misleading-upsc-civil-service-2022-results-advertisements-2591821-2024-09-01>
- ^{vii} Available at : <https://economictimes.indiatimes.com/industry/cons-products/fmcg/amway-making-false-misleading-health-claims-for-nutrilite-daily-up-court/articleshow/47240783.cms?from=mdr>
- ^{viii} Ms. Diwanshi Rohatgi & Ms. Tuhina Sinha, "The dark side of Marketing: Unmasking Misleading Advertisements to empower Indian Consumers", Chanakya Law REVIEW, vol. v (issue ii) July-Dec., 2024, pp.36
- ^{ix} Available at : <https://www.tribuneindia.com/news/business/orders-against-naaptol-for-indulging-in-misleading-advertisements-for-promoting-its-products-and-unfair-trade-practices-368479/>
- ^x CS (OS) No. 375 of 2013
- ^{xi} Available at : <https://bestmediainfo.com/mediainfo/advertising/consumer-affairs-ministry-fines-indiayaa-distribution-network-llp-for-misleading-ads-6236253>
- ^{xii} Available at : <https://www.livelaw.in/top-stories/supreme-court-patanjali-ayurved-baba-ramdev-contempt-proceedings-closed-266590>
- ^{xiii} The Advertising Standards Council of India
- ^{xiv} No person shall take any part in the publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for—
 - (a) The procurement of miscarriage in women or prevention of conception in women; or
 - (b) The maintenance or improvement of the capacity of human beings for sexual pleasure or



(c) The correction of menstrual disorder in women

^{xv} Subject to the provisions of this Act, no person shall take any part in the publication of any advertisement relating to a drug if the advertisement contains any matters which—

(a) directly or indirectly gives a false impression regarding the true character of the drug; or

(b) makes a false claim for the drug; or

(c) is otherwise false or misleading in any material particular.

^{xvi} .—No person carrying on or purporting to carry on the profession of administering magic remedies shall take any part in the publication of any advertisement referring to any magic remedy which directly or indirectly claims to be efficacious for any of the purposes specified in section 3

^{xvii} —No person shall import into, or export from, the territories to which this Act extends any documents containing an advertisement of the nature referred to in section 3 or in section 4 or section 5, and any document containing any such advertisements shall be deemed to be goods of which the import or export has been prohibited under section 19 of the Sea Customs Act, 1878 (8 of 1878), and all the provisions of that Act shall have effect accordingly, except that section 183 thereof shall have effect as if for the word „shall” therein the word „may” were substituted.

^{xviii} No person, organisation, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including Clinic, Laboratory or Centre having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such Centre, Laboratory, Clinic or at any other place.

(2) No person or organisation including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner regarding pre-natal determination or pre-conception selection of sex by any means whatsoever, scientific or otherwise.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

^{xix} Any person who publishes, or is a party to the publication of an advertisement, which— (a) falsely describes any food; or (b) is likely to mislead as to the nature or substance or quality of any food or gives false guarantee, shall be liable to a penalty which may extend to ten lakh rupees. (2) In any proceeding the fact that a label or advertisement relating to any article of food in respect of which the contravention is alleged to have been committed contained an accurate statement of the composition of the food shall not preclude the court from finding that the contravention was committed

^{xx} Available at : <https://www.azbpartners.com/bank/guidelines-for-prevention-of-misleading-advertisements-and-endorsements-for-misleading-advertisements-2022/>

^{xxi} Ibid note 20

^{xxii} Supra note 20

