

Misleading Advertisement and Indian Laws: An Overview

Dr. Praveen Kumar Rathi

Associate Professor-in-Law

HingiriZee University, Dehradun

Uttarakhand

Abstract:

Manufacturers and service providers sell their products and services to the public through communication. Such communication through mass media has provided a fruitful platform to the seller. Advertisement is a healthy practice but it becomes bane when advertisement gives untrue or misleading information to the consumers. To regulate of such unethical practices, various laws and regulatory bodies are existing in India to protect the interests of consumers. These laws and regulatory bodies are providing the legal remedies to the victims. This study is an attempt to understand situations of misleading advertisements and status of existing remedies.

Key Words

Advertisement, Laws, media, Communication, unethical, false, regulations, misleading advertisement, Market, product, Service, violation.

1. Introduction: Advertisement and consumer culture have become a part and parcel of our lives today. In the present globalised world era, advertising plays an important role in developing a strong brand name of the corporation or product¹. In markets there are number of manufacturers and service providers, their sole object is to sale their products and services and earns profit. They approached to the public through a communication and such type of communication which target to the audience is called advertisement. So advertisement is a means of communication used by the business houses to explain about their existing, up-coming products and services to the consumers.

The word advertising comes from the latin word ‘advertere’ means to turn the minds of towards. Some of the definitions given by the various authors are²:

According to **William J. Stanton**, “Advertising consists of all the activities involved in presenting to an audience a non-personal, sponsor-identified, paid-for message about a product or organization”.

According to **American Marketing Association** “Advertising is any paid form of non-personal presentation and promotion of ideas, goods and services by an identified sponsor”

According to **Webstar**, “Advertising is to give public notice or to announce publicity”.

According to **Gardner**, “Advertising is the means of mass selling that has grown up parallel with and has been made necessary to mass production”.

¹ Pushpa Girimaji, Misleading advertisements and Consumer, Centre for Consumer Studies Indian Institute of Public Administration.

² https://archive.mu.ac.in/myweb_test/sybcom-avtg-eng.pdf

Advertising is used for communicating business information to the present and prospective customers. It usually provides information about the advertising firm, its product qualities, place of availability of its products etc. Advertisement is indispensable for the sellers. In the modern age, large scale of production, producers cannot think of pushing sale of their products without advertising them. Advertising has acquired great importance in the modern world where tough competition in the market and fast changes in technology, we find fashion and taste in the customers.³ Advertising is an appeal to the public to use services and products. The appeal can be made through various means of communication, either traditional media or contemporary media. The term 'advertisement' also includes any notice, circular, label, wrapper or other document, and any announcement made orally or by any means of producing or transmitting light, sound or smoke;⁴

2. Misleading Advertisement-

Advertisement itself is not a problem but an important tool to grow business and to reach out to the vast market of consumers. But when advertisement is used to persuade consumers by way of unsubstantial claims, it is against their interests. If, an advertisement is deceptive, false or misleading then obviously is a question of ethics-morals of manufacturers and sellers. When it deliberately utters a falsehood or tries to misrepresent facts thereby misleading the consumer, then it becomes objectionable. Now it is imperative to know that when does an advertisement become misleading and can be understood with the help of some examples as given by Pushpa Girimaji, in her book '*Misleading Advertisement and Consumer*' are appended below⁵:

- When an advertisement of edible oil gives you the impression that you are free of heart problems so long as you are using that particular oil, then it misrepresenting facts.
- When an advertisement of a water purifier that filters only bacteria (and not viruses) claims that it gives 100 percent safe water, then it is a false statement.
- When a cell phone service provider promises calls for 40 paise per minute, but omits to say that this rate is applicable only when calls are made to numbers served by the same provider, then it constitutes misrepresentation.
- When a manufacturer claims that refrigerator marked by him is the best or that it keeps the food inside germ-free, that claim should be backed by adequate data to substantiate the claim. Or else, it becomes a false statement.
- When an advertisement for a detergent saus that it can remove grease in just one wash, it should be able to do just and the manufacturer should be able to prove this. Or else, it is an incorrect statement or a false advertisement.
- When an advertisement promises to give you a "free gift" every time you buy the advertised product, the free should really be so. If the manufacturer is recovering either fully or even partly, the cost of the so-called free gift, then the advertisement becomes false and misleading.
- If a retailer claims that heis offering a special discount on his goods as part of a festival celebration, while he is actually using the festival as an excuse to get rid of old and outdated good, then he deceiving consumers.

³ ibid

⁴ The Drugs and Magic Remedies (objectionable Advertisement) Act, 1954 Section 2 (a).

⁵ Pushpa Girimaji, Misleading advertisements and Consumer, Centre for Consumer Studies Indian Institute of Public Administration

- When a toothpaste advertisement says that it prevents cavities, one expects the manufacturer to have the data to prove this. If he fails to do so, then he is making an unsubstantiated claim or a false statement.
- If an advertisement for a face cream claims that it removes dark spots on the face and even prevents them from coming back, the manufacturer should be able to prove this. Or else, it is a deceptive advertisement.
- Even reducing crucial information about the product to minute letters at the bottom of the advertisement could be termed as an unfair trade practice, particularly if such information is not intelligible to the consumer.

With the term of 'Unfair trade practice' also we may discuss the meaning of misleading advertise. Any advertisement which gives false information regarding goods and services was considered to be a part of 'unfair trade practice'⁶ and any false representation of goods or services will be treated as unfair trade practice.⁷

3. Control Mechanism- In the interest of consumers and public at large to curb such false and misleading advertisements, a control mechanism is developed in India. This mechanism is in the form of laws, regulations and regulating bodies. Beside the laws and other bodies there is one self-regulating body of the industry [Advertising Standards Council of India (ASCI)]. This is a voluntary body of the advertising industry and has formulated a comprehensive advertising code for self-regulation.

To protect the consumer interests and punish to offenders, the controlling mechanisms is divided into two categories: 1. Laws and Regulations, and 2. Regulatory Bodies.

3.1 Laws and Regulations

In relation to advertisement numerous laws are prevailing in India. These codified laws are incorporated with very important legal provisions and all the advertising agencies including print and electronic media must keep in mind to these provisions. Some of these different laws may be discussed hereunder-

3.1.1 Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954: This Act declares prohibited to certain advertisements under section 3, 4 and 5. These advertisements are of certain drugs for treatment of some diseases and disorders, misleading advertisements of drugs and advertisement of magic remedies for the treatment of certain disease and disorders. In violation of these provisions, penal provisions of imprisonment are also provided and on first and subsequent conviction such imprisonment may be extended upto six months and one year respectively or with fine or with both.⁸

3.1.2 Cable Television Networks (Regulations) Act, 1995 and Cable Television Networks (Amendment) Rules, 2006- Section 6 of the Cable Television Networks (Regulations) Act, 1995 states that no person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the advertisement code prescribed under the Cable Television Networks (Amendment) Rules, 2006. Rule 7 of the Cable Television Networks (Amendment) Rules, 2006 lays down the conform to the laws of the country and to ensure that advertisements do not offend morality, decency and religious susceptibilities of the subscribers.

3.1.3 Food Safety and Standards Act, 2006: This Act incorporated the provisions related to misleading advertisements and unfair trade practice and provides that in relation to food there shall not be any

⁶ The Monopolies and Restrictive Trade Practice Act, 1969

⁷ The Consumer Protection Act 1986

⁸ The drugs and Magic Remedies (objectionable Advertisement) Act, 1954 Section 7.

advertisement which is misleading or deceiving and no person shall be engaged himself in any unfair trade practice.⁹ Chapter 9th of the Act provides penal provisions from section 48 to 67.

3.1.4 Drugs and Cosmetics Act, 1940: Under this Act Schedule- J has a long list of 50 disease and no one may purport or claim to prevent or cure one or more of disease provided in this schedule. These all prohibitions are made under Rule 106 of the Drugs and Cosmetic Rules 1945.

3.1.5 The Bureau of Indian Standards Act, 1986: Under this Act there is the Bureau of Indian Standards (Certification) Regulation, 1988. Rule 7 (1) (g) & (h) prohibits the misleading advertisement. Clause (g) states assessed and approval by the Bureau and clause (h) clarified that granting of license for management system certification shall not be considered approval by the Bureau.

3.1.6 The Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992- The sole object of law & policy is to protect the infant interests. For an infant mother's milk is better than any other product. This law also prohibits the advertisements and encouragement of infant milk substitute, feeding bottles because thereby they misleads to consumers into believing that infant foods or milk substitutes sold in the market are better than mother's milk.

3.1.7 Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003- According to Section 5 of this Act advertisement of all products of tobacco, either direct or indirect are prohibited in all forms including audio, video and print media.

3.1.8 Consumer Protection Act, 1986: The CPA 1986 provides that misleading or deceptive advertisement amounts to unfair trade practice. Unfair Trade Practice is defined under section 2(r) of the Act These advertisements covered to making false claims and misleading advertisements, offering of bargain prices or discounts and conducting of pseudo sales promotion contests.¹⁰ This Act has been replaced by the Consumer Protection Act 2019.

3.1.9 Consumer Protection Act, 2019: This Act came into effect on 24th July 2020 by replacing the previous Consumer Protection Act with some new provision including the mechanism and penal provisions. Act provides to establishment of Central Consumer Protection Authority, In case of false or misleading advertisement, by a manufacturer or endorser, Central Authority may impose the penalty which may be extended to Rs. 1000000/- and on subsequently conviction to penalty may be extended upto Rs 5000000/-

3.1.10 Doordarshan/ All India Radio (AIR) Advertisement Code- Doordarshan and All India Radio, both under the control of Prasar Bharati (a statutory autonomous body established under the Prasar Bharati Act)- This Code illustrated the comprehensive code for commercial advertising which control the content and nature of advertisements that can be relayed over the agencies.

3.1.11 Emblems and Names (Prevention of improper use) Act, 1950- this Act came into force on 1st September 1950 prevent the improper use of certain emblems and names for professional and commercial use. These name, emblem or official seal including United Nations Organization, WHO, Indian National Flag, Government of India or any State, President and Governor etc. Section 5 of the Act provides the penalty which may be extended to five hundred rupees incase of any violation.

3.1.12 Indecent Representation of Women (Prohibition) Act, 1986- In Indian society women got a special status and it is required that everyone should respect the women. This Act is also prohibiting the depiction of women in an indecent or derogatory manner in the media. According to this Act no person

⁹ Section 24 of the Food Safety and Standards Act, 2006

¹⁰ Verma DPS, 'Regulating Misleading Advertisements: Legal and Institutional Framework' journals.sagepub.com

shall publish or cause to be published, or arrange or take part in the publication or exhibition of any advertisement which contains indecent representation of women in any form.

3.1.13 Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994- This Act was enacted and brought into operation from 1st January 1996 in order to check female foeticide. The Act prohibits any advertisement in any manner regarding facilities of pre-natal determination of sex. In contravention of this punishment is provided which may extend to three years imprisonment and fine which may be extended to Rs. 10000/-.

3.1.14 Young Persons (Harmful Publications) Act, 1956- Harmful publication includes any book, magazine, pamphlet, newspaper or other like publication which consists of stories told with the aid of picture or without the aid of pictures or wholly in pictures, being stories portraying wholly or manly the commission of offences, or acts of violence or cruelty or incidents of a repulsive or horrible nature. The advertisement etc. of such publication is prohibited and punishable under section 3.

3.1.15 Indian Penal Code, 1806- The IPC, vide an array of provisions, prohibits obscene, defamatory publication, publication of a lottery and/ or statements creating or promoting disharmony/ enmity in society. Sections 292, 292A and 293 of the Code have been enacted for protecting and safeguarding the public morals and prohibit the sale etc. of obscene literature and publication in general and to young person below the age of 20 years in particular.

Needless to say, the foregoing laws are in addition to applicable IPR laws and other relevant laws in general.

3.2 Regulatory Bodies: To control and regulate the false and misleading advertisements numerous legal provisions are provided under the codified laws. For the proper enforcement of these laws some regulatory bodies are also provided. Out of these some regulatory bodies are appended below-

3.2.1 Insurance Regulatory Development Authority: Insurance Regulatory and Development Authority (IRDA) is a statutory body formed under the IRDA Act 1999. It's main object is to supervision and development of insurance sector of the country. The IRDA sets his mission as “ To protect the interest of the policyholders, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto.”¹¹ The IRDA (Insurance Advertisement and Disclosure) Regulations, 2000 lays down strict guidelines and mandates that the advertisement related to insurance policy should not in any way be unfair or misleading.¹²

3.2.2 Telecom Regulatory Authority of India (TRAI): This is a regulatory body established by the government of India under the Telecom Regulatory Authority of India Act 1997 to regulate the telecommunication sector in India. Authority had hauled up the operators for failing to issue tariff information in the advertisements in such manner as prescribed. Directions issued to the operators to discontinue or modify any advertisement which is found to be misleading or false.

3.2.3 Securities and Exchange Board of India (SEBI): Under the Section 11 of the Securities and Exchange Board of India Act, 1992 the Securities and Exchange Board of India issued the guidelines. These guidelines are called the Securities and Exchange Board of India (Disclosure and Investor

¹¹ Insurance Regulatory and Development Authority of India, website: irdai.gov.in

¹² Pushpa Girimaji, Misleading advertisements and Consumer, Centre for Consumer Studies Indian Institute of Public Administration at p-19

Protection) Guidelines, 2000 and chapter of these guidelines provides specific guidelines¹³ from 9.0 to 9.2 on advertisement. Some provisions are appended below:

- i. Advertisement should be truthful, fair and clear and should not contain any untrue and misleading advertisement.
- ii. Relevant information shall be provided with disclosing all the fact.
- iii. To avoid the misleading advertisement, guidelines explained the act of misleading.
- iv. An advertisement shall be set forth in a clear, concise and understandable language.
- v. In the advertisement complex language shall be avoided.

Mutual Funds are one another subject supervised by the SEBI. There are regulations for mutual funds known as the (Mutual Funds) Regulations 1996. This regulation has provided detailed guidelines on the advertisement of mutual funds.

3.2.4 Reserve Bank of India: To regulate and supervise the financial matters of the country, the Reserve Bank of India (RBI) is an apex body. The RBI was constituted under Reserve Bank of India Act, 1934 in British era. Chapter 3B of this Act deals with “Provisions relating to non-banking institutions receiving deposits and financial institutions”. On the basis of Sections 45J, 45K, 45L and 45MA of Act, RBI has notified exhaustive directions on advertisements.¹⁴

3.2.5 Medical Council of India: Under the Indian Medical Council Act, 1956 the Medical Council of India (MCI) is constituted. Section 33 of the Act authorized to the MCI to made regulations for “standards of professional conduct, etiquette and code of ethics”. Indian Medical council (Professional Conduct, and Ethics) Regulations 2002 deals with code of medical ethics. Chapter-6 of regulations deal with advertisements.

3.2.6 Advertising Standards Council of India- The Advertising Standards Council of India (ASCI) is a self regulatory body. This body is a group of volunteers those are involved in advertising including advertising agencies and the media. The ASCI was established in the year 1985 and has drawn up a comprehensive advertising code for self regulation.

If a consumer or even an industry, feels that an advertisement contravenes the code or is of the view that an advertisement could be false or misleading, a complaint can be sent to ASCI. On receipt of a complaint, ASCI seek the comments of the advertiser and give him two weeks to respond. If there is no response from the advertiser Consumer Complaint Cell (CCC) can take an *ex-parte* decision. ASCI's efforts are commendable, but the problem is that among the members who may violate the code or not comply with the CCC's decision or those in the industry who does not believe in self-regulation and therefore do not want to become members of ASCI at all.¹⁵

4. Conclusion

Presently in India, numbers of regulations are monitoring the display of obscene and misleading advertisements. Beside this we can see various advertisements which are patently false and misleading. They are promoting dubious goods and making unsubstantiated claims. Most of these ads are not noticed by the statutory bodies as they are ignored by the consumers. In the interest of consumers, role of the regulators is more important and in case of violations of the rules they should take immediate action

¹³ Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000, Chapter-9.

¹⁴ Reserve Bank of India Act, 1934

¹⁵ Pushpa Girimaji, Misleading advertisements and Consumer, Centre for Consumer Studies Indian Institute of Public Administration at p-11

Dr. Praveen Kumar Rathi

against the violators. There is a need of the hour that ASCI should be given a binding force to regulate every kind of advertisement such as electronic, print etc.