

Advertising Laws in India – An Overview

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H.G. Wells once famously said that advertising was legalized lying. This reflects the dilemma on advertising and its effect on consumers. In an environment of zealous competition in the foreground of a market economy, advertisements often tend to exaggerate and misrepresent facts which ultimately affect impressionable minds. That is precisely what all legal systems must seek to address. Several countries have enacted comprehensive laws that govern and control advertising. Many countries in Europe restrict domestic advertising that target children below a certain age. In the UK, the Advertising Standards Authority lays down the standards for advertising in all kinds of media while all outdoor advertising is done with permission from the local town planning authorities. As for the US, the Federal Trade Commission is the relevant and the ultimate authority on the subject although local governments are allowed to enact their own regulations in this regard.

In India, the field of advertising is subject to a multiplicity of laws in the absence of a comprehensive statutory mechanism that would lay down ground rules in clear terms for advertising in the country.

Issues in Advertising

Deceptive Advertising- As advertisements aims to influence or persuade customers into buying products that they promote, many a times advertisements illegally use false statements and misrepresentations about their products in violation of customers' right to know exactly what they are purchasing.

Misleading Prices- Companies often hide or fudge prices of products/ services advertised in order to attract a larger customer base. The prices they advertise often do not disclose additional charges and the overall cost to the customer. Such advertisements are commonly found in the airlines, mobile telephony industry and memberships for clubs. A common case of such misleading pricing is the 'end-of-season sales' when the prices of products are often knocked down and advertised in the media in order to push up sales. But what such advertisements don't disclose is that such knocked down/ discounted prices are actually pushed up before providing the discount so that the profit margin of the seller on such products remains intact.

Failure to maintain standards- At times companies/ sellers/ service providers cleverly bypass established standards applicable to the products by adopting a different standard which provides a sense of enhanced efficacy of the goods/ services in the mind of the customer. This also provides unfair advantages to the seller over its competitors. Such advertisements are often seen in advertisements that compare the products advertised against the products of other leading brands.

Labeling issues- Labeling on products can also be misleading. They may, at times, misrepresent or obfuscate the actual weight of the packets or adopt a different standard of measurement contrary to the generally accepted standards. The packaging of products may also use exotic high sounding words such as "organic", "eco-friendly", "natural", "mild" etc. without a proper explanation of the terms and such terms may even be used for products that have nothing to do with such concepts.

Surrogate Advertisements- Whenever the advertisements for certain products like tobacco or liquor which have adverse effect on health and are restricted or banned, the manufacturers tend to launch new products with similar brand names. A blitzkrieg of advertisements is launched in the media for such new products with an aim to reinforce or sustain the banned products/ advertisements.

Legal Scenario in India

There are several laws in India that relate to advertising. A snapshot of some of these enactments is provided hereunder-

Consumer Protection Act, 1986- Section 6 of the Act grants consumers the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices. Section 2(r) of the Act, under the definition of the term "unfair trade practice", covers the gamut of false advertisements including

misrepresentations or false allurements. Redress against such unfair trade practices pertaining to false advertisements may be sought under the Act;

Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003- Section 5 of this Act, inter alia, prohibits both direct & indirect advertisement of tobacco products in all forms of audio, visual and print media;

Cable Television Networks (Regulations) Act, 1995 and Cable Television Networks (Amendment) Rules, 2006- Section 6 of the Cable Television Networks (Regulations) Act, 1995 provides 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. However, the aforesaid provision does not apply to programs of foreign satellite channels which can be received without the use of any specialized gadgets or decoder. Rule 7 of the Cable Television Networks (Amendment) Rules, 2006 lays down the "Advertising Code" for cable services which are formulated to conform to the laws of the country and to ensure that advertisements do not offend morality, decency and religious susceptibilities of the subscribers;

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

Drug and Magic Remedies (Objectionable Advertisement) Act, 1954- This Act purports to regulate the advertisements of drugs in certain cases and to prohibit the advertising for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith;

Drugs and Cosmetics Act, 1940- Section 29 of the Act imposes penalty upon whoever uses any 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. The punishment prescribed for such an offence is a fine which may extend up to five hundred rupees and/ or imprisonment up to ten years upon subsequent conviction;

Emblems and Names (Prevention of improper use) Act, 1950- This piece of legislation prohibits the use of any trade mark or design, any name or emblem specified in the Schedule of the Act or any colorable imitation thereof for the purpose of any trade, business, calling or profession without the previous permission of the Central Government;

Food Safety and Standards Act, 2006- Section 53 of this Act provides a penalty of up to Rs. 10 lakhs for false and misleading advertisements relating to the description, nature, substance or quality of any food;

Indecent Representation of Women (Prohibition) Act, 1986- This Act is aimed at prohibiting indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto (Section 3 and 4 of the Act).

Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994- Advertisement in any manner regarding facilities of pre-natal determination of sex available at any genetic counseling centre, laboratory, clinic or any other place is prohibited under this Act and has been made a punishable offence under the Act (Section 22);

Young Persons (Harmful Publications) Act, 1956- Section 3 of the Act, inter alia, imposes penalty for advertising or making known by any means whatsoever that any harmful publication (as defined in the Act) can be procured from or through any person;

The Representation of People Act, 1951- The display to the public of any election matter by means of cinematograph, television or other similar apparatus in any polling area during the period of forty-eight hours ending with the time fixed for the conclusion of the poll for any election in the polling area is prohibited under the Act (Section 126).

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.

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

Advertising Standards Council of India (ASCI)

Advertising Standards Council of India (ASCI) is a self-regulatory voluntary organization of the advertising industry. The ASCI has drawn up a code for self-regulation in the advertising industry with a purported view to achieve the acceptance of fair advertising practices in the best interests of the ultimate consumer. The ASCI also lays down similar codes for advertisements in specific sectors/industries from time to time. However, the codes are self-imposed discipline to be followed by those involved in the industry and in no way are the codes mandatory. As such, compliance with the code is rare and very few complaints are actually received by the ASCI on account of non-compliance. Nevertheless, the Cable Television Networks (Amendment) Rules, 2006, under Rule 7(9) makes it mandatory for all advertisements carried by cable services to be compliant with the ASCI code. According to the ASCI code, complaints against deviant advertisements can be made by any person who considers them to be false, misleading, offensive, or unfair. The Consumer Complaints Council (CCC) considers and decides on the complaints received from the general public including government officials, consumer groups, and complaints from one advertiser against another and even sue moto complaints from the member of the ASCI Board or CCC.

Advertising Standards in India:

An Introduction In the last few years advertising has become serious and big business. The advertising business is growing at a considerable rate. There are several legislations that control the content of advertising. Some of the principal legislations are – • Cable Television Networks (Regulation) Act, 1955 • Press Council of India Act, 1978 • Cable Television Networks (Amendment) Rules, 2006 There are also some prominent, prohibitory legal provisions that regulate advertising. In 1985, the Advertising Standards Council of India (“ASCI”), a non-statutory tribunal, was established that created a self-regulatory mechanism of ensuring ethical advertising practices. ASCI is a voluntary Self-regulation council. The members comprise Advertiser’s, Media, Advertising Agencies and other Professional/Ancillary services connected with advertising practice. ASCI entertained and disposed of complaints based on its Code of Advertising Practice (“ASCI Code”). This Code applies to advertisements read, heard or viewed in India even if they originate or are published abroad so long as they are directed to consumers in India or are exposed to significant number of consumers in India.

Compliance of the ASCI Code

- ASCI membership and compliance of the code should be made mandatory for advertisers, agencies and media. Mandatory compliance would ensure stricter implementation of the code.
- There should be public blacklisting and imposition of heavy fine for non-compliance of the code. The corpus accumulated from the financial penalty can be used to support Public Service advertising or not for profit business advertising.
- The body should conduct extensive awareness programs and educate the members on compliance of codes
- The body should work along with different sector specific associations to ensure compliance of codes
- ASCI logo can be used by members in all their ads to gain credibility in the industry. But firstly, it is important to create public awareness about the regulatory body.
- Every information given in advertisements should be without conditions apply. This would see a great improvement in advertisements by ensuring correct representation of the facts.
- There should be proactive monitoring of misleading advertisements. Unless a complaint is registered, it is impossible to identify misleading advertisements.
- The bulk of the misleading advertising happens in rural India, where consumers are unaware of such regulatory bodies the actions of ASCI is not visible in these areas.
- ASCI are seen as focusing only on inter-corporate disputes and Cable TV as a medium, it is not addressing the larger issues that Indian consumers face.

Suggestions

- ASCI need to take up the issue of misleading advertising happening in rural India.
- A certification clearance before the release would be a preventive measure rather than existing reactive one.
- The regulatory body needs to adopt stringent measures with robust implementation mechanism such as – Prompt action on the complaint and power to pull out advertisement immediately from screening.
- It should have the power to assess and evaluate each claim by the advertisers and penalize the errant.
- ASCI must initiate sue motto action in case there is no complaint registered.
- Hefty financial punishment in order to make the cost of noncompliance very heavy.
- Blacklisting/ Ban for a specific period of the Ad makers
- More interactive and accessible system for lodging a complaint. E.g. Online Forums, Facebook page etc.
- The issue of misleading advertisement should be raised on Blogs & twitter as every advertiser is very sensitive and cautious about its brand image.
- Consumers have to be educated on what can be considered as misleading, what are their rights and about the complaint mechanism.
- A public awareness campaign on the ill effects of misleading ads funded by the ad industry will establish responsibility and credibility.
- ASCI certification of practice for all advertising agencies and it can be made mandatory to use this eligibility to create or release advertisements. Such a step would bring in better moral and enforceable code of conduct.
- It is important to have Govt. Regulation as self-regulation can never be effective. A statutory regulatory body armed with the teeth to punish the guilty is required. The body should have a major representation from private members.

References

1. Basin, Lalit (2010): “Media World and Law”, New Delhi: Universal Law Publishing Co. Pvt. Ltd
2. Divan, Madhavi Goradia, (2010): “Facets of Media Law”, Lucknow: Eastern Book Company.
3. Madabhushi, Sridhar (Dr.), (2007): “Law of Expression (An Analytical Study of Laws for Media)”, Hyderabad: Asian Law House.
4. “Press, Media and Communication Laws, (Legal Manual)”, (2002) New Delhi: Universal Law Publishing Co.
5. Rayudu, C.S. and Rao, S.B. Nageswara, (1995): “Mass Media and Regulation”, Mumbai: Himalaya Publishing House.
6. Robertson, G. and Nichol, A., (2002): “Media Law”, New Delhi: Penguin Book India Pvt. Ltd.
7. Print and Electronic Media. (2010) In: Chronicle Year book, p. 228.