

Legal Regulation of False and Misleading Advertisements with Special Reference to Consumer Protection Act, 2019

Meenakumary S¹

Abstract

Advertising is an effective sales promotion technique to bring the products and services to public attention and persuade consumers to purchase them. It is one of the important elements of the promotion mix and the best marketing strategy adopted by marketers to highlight their products and ensure maximum public outreach as it has various media sources such as TV, radio, newspapers, posters and other social networking websites extended towards the public. The quality of advertisement, namely, celebrity endorsements, definitely influences the consumer's buying behaviour and hence plays a vital role in the decision-making process of product purchase. Hence consumer's interests must be protected in relation to these advertisements through proper legislation and Consumer Protection Act, 1986 was enacted by the Parliament to protect, promote and enforce the rights of consumers in case of consumer rights violations and unfair trade practises, and proposed a three-tier redressal mechanism at District, State and National level for speedy disposal of consumer grievances. Later on, this Act was replaced by Consumer Protection Act, 2019 which inserted new provisions for false and misleading advertisements and establishment of Central Authority for effective enforcement of consumer rights. This Article reviews the legal regulation of false and misleading advertisements under the Consumer Protection Act, 2019 and the establishment of a new investigation agency known as Central Consumer Protection Authority (CCPA) for investigating and deciding on matters relating to misleading or deceptive advertisements.

Keywords: Consumer, regulation, false and misleading advertisements

Introduction

Advertising is an important element of the marketing mix by which marketers make use of the various tools of communication with the twin objective of targeting potential customers over a specific product and persuading them to purchase it. It is one of the most commonly used tools of promotion. There are three major concerns focused on the information that marketers provide to consumers, generally in the form of advertisements-the, accuracy of the information provided, the adequacy of the information provided, and the cumulative

impact of marketing information on society's values (Hawkins et al, 2007).

Advertising is an optimized tool of promotion which is developed to bring products, services, opinions, or causes to greater public attention and thereby influence them to respond positively in favour of the advertisements (Jain, 2008). Advertisement to be effective, it must satisfy the interest of the public and the result of a skilled quality media. There are numerous media of advertising namely, print media consisting of newspapers, magazines; radio, TV, Billboards and posters,

¹ Assistant Professor, Government Law College, Thiruvananthapuram

audio pronouncements, hoardings, personal advertisements, direct mail and internet. Now, all over the world, advertisement is being used to influence consumers, and the response of consumers are determined by considering the following factors (Bagga, 2013):

- Awareness about the product or service
- Regular practise to use it or not to use it
- Efforts
- Communication
- Beliefs, and
- Optimum utilization

In order to prevent advertisements from misleading and exploiting consumers, a brand-new code of conduct was laid down by the Parliament to be the Consumer Protection Act, 2019. The New Act came into force on July 2020 and introduced provisions for false and misleading advertisements in addition to unfair trade practices. False and misleading advertising is a type of deceptive or untrue advertising making false claims or guarantees intentionally to promote the sale of property, goods or services. The Act of 2019 has also established a Central Consumer Protection Authority, otherwise known as Central Authority, to investigate on matters relating to false and misleading advertisements which are detrimental to the interest of consumers and has also conferred on them the power to pass orders to discontinue the misleading advertisement or modify the same, impose penalties and punish the offenders with imprisonment, as the case may be.

Advertising and Consumer Buying Behaviour

Advertising is a selling idea that aims to influence the shopping behaviour of various categories of consumers. Whereas client behaviour is the method by which individuals appraise, choose and consume the merchandise or service to satisfy their want or wish. The foremost common medium of advertising includes newspapers, magazines, social networking websites, television, radio, brochures and posters. In olden times marketers used completely different signs and symbols to promote their merchandise and conjointly

to form awareness for the purchasers. With the advancement and development in art, graphics and skilful technologies, currently marketers use advertising in the concert of the foremost acquainted medium of communication to guide the possible consumers.

Celebrity attachments, attractive audio and video representations with special effects and promises enhance confidence in the mind of viewers as they assure standard product quality and make even simple products more desirable. Advertising plus famous celebrity involvement promotes and raises the awareness of a product in the minds of the potential customers and also definitely influences the product purchase. There is no doubt that today most organizations invest huge amounts in marketing their products and services through these modes as it can reach the maximum audience with efficient cost.

Advertising Influence on Children and Adolescents

Children are inhabitants of media-rich surroundings and are exposed to advertisements mainly on Television, newspapers and online social networks like YouTube, online shopping websites and other online platforms. These media sources play a vital role in impressing the children of different age groups, such as infants, school-aged children, and adolescents and tend to create a strong desire in their minds through colourful and pleasing visual representations to use the product. Skincare products, food choices, digital games, and movies are some of the predominant areas of attraction to children. Children are mainly tempted to try these skincare and food products since advertisements present them in a more appealing way and promises instant results of a rejuvenating, healthy and energetic mind and body. The racial stereotype is one of all the standard myths which have affected the society since decades all over the globe. We cannot deny the fact all forms of media have significantly contributed in focusing such beliefs again. Indian media and commercials also give lot of importance to fair skin tones (Sindhusree, 2018).

In today's world, television has become a significant part of children's lives. Youngsters watch television during most of their free time. They are exposed to advertisers' messages and are vulnerable to worldly advertising. Foods advertised when children are most likely to be watching are high in fat and sugar and low in fibre, with comparatively less nutrients. Fast foods, high-fat foods, high-sugar foods, and sugar-sweetened beverages are heavily advertised during prime-time programs that concentrate on all age groups, including adolescents. Healthy foods, such as fruits, vegetables, whole grains, milk, and low-fat items, are seldom publicised on television. Repeated exposure to high-calorie, low-nutrient foods may increase the desire for these foods. Children who view more commercial television programs make more requests for such food items (Ghimire N, 2013). Thus, the strong convincing nature of advertisements plays pivotal role in framing the opinion of people.

Moreover, online games, alcohol and the related advertisements bring a strong desire in the mind of children, including youth. Exposure to alcohol advertising contributes to an increase in underage drinking which ends up in issues related to alcohol consumption. Younger adolescents appear to be susceptible to the credible messages contained in alcohol commercials broadcast on TV, which typically leads to a positive reaction to the ads. Hence advertising has an impact on children's decisions and it appears harder for parents to advise them and make them aware about the risk involved (Grenard et al., 2013). Children are more likely to select the advertised item, despite parental efforts (Ferguson et al., 2011).

The youth acquire information concerning numerous products primarily from television and newspaper advertisements. Both of these being visual media, people have a tendency to believe more on these media. The majority of the youth make purchases after watching TV promotions as they get impressed by the product presentations and its features. As advertisement features the product information to the customers, it helps them to take better

decisions and to improve their standard of living. The advertising media has a great influence on the psychosocial development of youngsters, regarding which the physicians should create strong awareness in the minds of the parents about the wild exposure of their kids on media and to give proper guidance on its usage. Therefore, marketers need to design their advertisements in conformity with the buying behaviour of youth and their interests.

Different Types of Advertising and their Impact on Consumer Buying Behaviour

The level of consumer satisfaction depends upon the following factors (Williams, 1991):

- Expectations from a product,
 - a) Importance and worth of the product in consumption,
 - b) Characteristics of the product, whether they are higher or worse than expected,
 - c) The discrepancy between expectation and actual expertise of the product/service, and
 - d) Performance of the product.

The impact of advertisement depends ultimately on various factors besides consumer satisfaction (Malik et al., 2014):

- 1) The rate at which new messages enter the social system through advertisements of various manufacturers;
- 2) The persuasive influence and the message contained in new stories through print, audio and television media;
- 3) The delay in influences overtime of existing advertisements;
- 4) The percentage of targeted cluster affected by the advertisement

Thus, advertising is an effective sales promotion strategy through which the quality, quantity and related descriptions of the products reach a large number of populations from any corner of the world. The existing mosaic supervision system is no longer enough to govern the advertising industry effectively due to its larger impact on society and the globalised industrial trends. The

increasing risks associated with advertising make it essential for consumers to be more aware of the product and its features. Besides this, most companies need to be defended from other rival corporate groups who compete with them regardless of consumer safety. Therefore, it is essential to formulate a codified legal framework to regulate advertising and its liabilities.

False and misleading advertisements can be broadly categorised into two. The first category classifies the advertisements which violate the consumer's right to information and choice, and the second category includes the violation of the consumer's right to safety.

The following are some examples of misleading advertisements:

- An edible oil advertisement assuring a healthy heart, free from heart diseases so long as it is used.
- An advertisement of a water purifier that removes only bacteria and falsely guaranteeing 100 percent safe water.
- A telecom service provider guaranteeing STD calls for 50 paise per minute deliberately concealing the material fact that the said offer is applicable only when calls are made to numbers serviced by the same provider.
- A manufacturer claiming that the refrigerator marketed by him is the best assuring fresh and germ-free food owes a duty towards his customer to justify the same.
- A manufacturer of detergent claiming to remove grease or any dirt in just one wash should be able to prove the same.
- A retailer offering special discount on his goods as part of a festival celebration, merely to get rid of damaged and outdated goods or old stocks.
- An advertisement by a toothpaste manufacturer claiming prevention of cavities and strong teeth unable to prove the same.
- Manufacturer of a face cream assuring the removal of dark spots on face and preventing their further occurrence failing to prove this.

- Presenting significant details about the product in small letters at the bottom of the advertisement deliberately with a view to hide it from the viewers.

When advertisers engage in misleading or false advertising, consumer choice is affected because consumers are unfairly convinced to believe in the messages of the advertisers, which affect their judgment. Misleading advertising either compels consumers to purchase items at a higher price or at a lesser quality than what they wanted, or to purchase the wrong product or service. Such advertisements violate the interests of consumers by suggesting that the product or service has unique qualities. They also manipulate consumers, thus making them more vulnerable and less likely to make rational choices.

To protect the consumers against such misleading advertisements and to ensure fair practice in business, the Consumer Protection Act, 2019 has brought in an effective and elaborate regulatory framework. The Act recognises six basic consumer rights namely:

1. Right to Safety- Consumers are the ultimate users and hence they have the right to be protected against the goods and services which are endorsed in such a way as to threaten their life and property. The right extends to areas of electrical appliances, healthcare, automobile, pharmaceuticals, housing, travel etc. Nowadays, each and every area has an office for researchers who introduce new products and appliances after proper research and evaluation. Most of these products are not tested by the producers which proves to be harmful to the consumer. Therefore, after the enforcement of this act, it is necessary for each sphere of production to get all their products which have potential danger to the life to be carefully tested and approved before launching it in the market.
2. Right to Information- It refers to the right of a consumer to be informed of the quality, quantity, potential, standard

and worth of the goods and services being sold by the shopkeeper. This right is given to the consumer in order to secure themselves from various unfair trade practices performed by the seller in order to earn more profits. Therefore, it is an obligation on the part of the seller to provide all relevant information regarding the product to the consumer.

3. **Right to Choose-** Right to choose is a right assured to consumers on any class of products and services at affordable rates. It is very common to find one product being sold at different possible prices by different sellers. This reflects the age of market rivalries who is found in almost all countries. Therefore, it is the right of all consumers to purchase any product at any price which satisfies his needs and desire. A consumer cannot be compelled to purchase a product of some particular brand or quality.
4. **Right to be heard-** This right is the assurance that consumers' interests will receive due attention at appropriate forums. This right was introduced for a consumer in order to ensure that all the complaints and issues of the consumers are heard duly by the appropriate authority. This is because of this right that almost all the large companies have a separate customer service department to help the consumers in case of any dispute or complaint regarding the quality or quantity of the product.
5. **Right to seek Redressal-** If any consumer has been manipulated by the seller or faced any unfair trade practices, he can seek redressal i.e., compensation or damages under this right. This right ensures that all the grievances of the consumers are dealt with and justice is done to him. A proper redressal mechanism has been set up by the government of India at District, State and National levels for this purpose.
6. **Right to Consumer Education-** It is the right of each and every person who is a citizen of India to have the knowledge and fair understanding of all the laws and

policies relating to consumer rights and interests.

Proactive Steps to Curb Misleading Advertisements

Under the new Act, advertisement means any audio or visual representations or publicity made with special effects and covers various electronic and print media. Advertisements tend to be misleading u/S. 2(28) of Consumer Protection Act, 2019 when they give false descriptions, guarantee, or intentionally conceal any material information or defects of the product being advertised.

The Central Consumer Protection Authority (CCPA) established under this Act is conferred with the power to issue proper directions and impose penalties against false and deceptive advertisements hence preventing them. If the Central Authority is satisfied after investigation that the advertisement is misleading or affects any basic rights of the consumers, it may by order direct the concerned marketer or endorser to discontinue the said advertisement or to modify the same as directed. The authority is empowered to monitor matters relating to consumer grievances, unfair trade practices and false or misleading advertisements, which are likely to deceive the consumers and to promote, protect and enforce their rights.

If an advertisement is found to be misleading or deceptive which tends to cause harm to the consumers, then the Central Authority may impose a penalty of up to Rs.10,00,000 (Rupees Ten Lakhs) on the manufacturer who deliberately cause the same to be false. In case of a subsequent offence, the fine may extend to Rs.50,00,000 (Rupees Fifty Lakhs).

The New Act has also made false and misleading advertisements a criminal offence i.e., if found guilty, they could be sentenced to imprisonment for a period not exceeding two years. In the case of a subsequent offence, the term of imprisonment may extend up to five years. Further, the Authority impose a penalty by taking into consideration the people, their vulnerability and the extent to which they are affected by misleading advertisements, and

the gross revenue from the sales effected on account of such offence.

Lately, the Central Authority regulating the consumer protection has issued show cause notices to 14 companies in different spheres such as water purifiers, disinfectants, floor cleaners, furniture, etc for making false claims with immunity boosters and covid-19 virus protection thereby deceiving the consumers through publishing fake and misleading advertisements.

In *Horlicks Limited v. Zydus Wellness Products Limited*, *Horlicks Limited* (“Horlicks”) approached the Delhi High Court, seeking a permanent injunction restraining *Zydus Wellness Products* (“Zydus”) from telecasting its advertisement, which showed that one glass of Complian (a Zydus Product) is equivalent to two glasses of Horlicks. The advertisement in contention was being telecast on multiple channels in English, Bengali and Tamil. Aggrieved by the advertisement, Horlicks approached the High Court on the ground that the advertisement was misleading and amounted to disparagement. The Court was of the opinion that a viewer or a customer who sees any advertisement of such a small duration could not be expected to read any sort of textual disclaimer given anywhere on the screen. Justice Mukta Gupta, the presiding Judge over the case, said that under such circumstances, any viewer viewing the commercial would be deceived and Horlicks (the plaintiff) would have to suffer an irredeemable loss. Thus, the High Court restrained the Zydus Company from airing its commercial in the current form till the time the lawsuit that was that was initially filed by Horlicks wasn’t disposed of.

Liability of endorsers under the Act of 2019

The endorsement in relation to an advertisement means any statement, demonstration or depiction of the name, signature, or such recognisable personal characteristics of an individual having high degree of trust, recognition and respect in society which greatly influence the consumers to believe the demonstrations publicized

by such endorsers. Ever since globalisation has ushered in the spate of consumerism, celebrities have become the pre-eminent choice for brands to target a relevant audience to promote their products. Quite often, we see that celebrities become the alter ego or personification of the brands they endorse. McCracken (1989) uses ‘meaning transfer perspective’ to describe the process through which the symbolic characteristics of the celebrity endorser move from the celebrity to the offering and then to the consumer. He states that celebrities have their own meaning as they have created this meaning in films, sports achievements or political campaigns in a given cultural environment that cannot be found elsewhere.

The Duff and Phelps celebrity Brand Valuation Report 2018 state that celebrity endorsements have increased nearly threefold in the last one decade. Consumer confidence and trust in their favourite celebrity, induce consumers to select those products or services. However, till the Act of 2019 was passed there was no comprehensive law to regulate or prohibit misleading celebrity endorsements.

The only regulation that existed prior to the Act was the self-regulatory code of Advertising Standards Council of India (ASCI). The Code required the celebrities to partake due diligence in the claims and statements of the product or service endorsed by them so as to ensure the veracity of their claims. However, the Code did not provide any statutory sanctions or penalties for any misleading or false claims advertised by the celebrities. To make celebrities accountable for their endorsements, the Consumer Protection Act, 2019, which has replaced the 1986 Act has specific and express provisions for fixing pecuniary and penal liability on celebrity endorsers.

As per Section 21 of the Act, the CCPA is empowered to order discontinuation or modification of a misleading or false endorsement which is prejudicial to the interest of the consumer or in contravention with the consumer rights. The Authority is also empowered to inflict appropriate penalty on the endorser of the deceptive advertisement and to

prohibit him from making further endorsement of any product or service for a specific period.

However, the endorser shall not be held liable if he has exercised due diligence in verifying the correctness of the claims mentioned in the advertisement regarding the product/service. This is a good defence available to the endorser or the promoter but the same shall be denied if he had previous knowledge about the claims made in the advertisement.

Interestingly, in 2016 there was a case in Kerala, which involved a high-profile brand ambassador, superstar Mammooty who found himself entangled in a legal trouble when a 67-year-old man approached the court alleging that he did not become fair as promised by the celebrity in the ad of Indulekha beauty soap. The complainant claimed Rs 50,000 as compensation, but the matter was settled out of the court by the company which agreed to pay Rs 30,000.

Recently, the District Consumer Redressal Forum, Thrissur ordered the makers of Dhathri hair oil brand and movie actor Anoop Menon, who promoted the product through advertisement to pay a compensation of Rs.10,000 each for making false promise “lush hair growth in six weeks”. Here the litigant, Francis Vadakkan alleged that he bought the hair cream for Rs.376 on seeing the advertisement and used it for seven consecutive weeks. However, there was no improvement and the actor further testified that he had never used the hair cream and has only used the oil prepared by his mother (Nanda S 2021).

The new provisions seem to drive up the price for celebrity endorsement contracts in future. It would ensure that companies and celebrities are more circumspect when it comes to the products/service they endorse and the claims they make.

Conclusion

Being a consumer is a quality that belongs to all citizens and in that sense, citizen rights as a consumer are human rights. The importance accorded to the consumer derives from the

fact that lack of protection of consumer rights paves the way for deception of man – consumer by his fellow man, manufacturer or trader is prejudicial to human dignity. Yet, consumers have long been at the receiving end of market manipulations and unfair trade. This is accentuated by the fact that there is a proliferation of products and services, in light of global supply chains, e-commerce and international trade as never before. The new markets had provided a wider range of access to consumers as well as exposed them to highly sophisticated and often covert unfair trade practices.

As opined by the Supreme Court of India, the Consumer Protection Act of 2019 Act has sought to address “the myriad and constantly emerging vulnerabilities of the consumers”. The recurring theme in the new legislation was the protection of consumers, which was sought to be strengthened by procedural interventions such as strengthening class actions and introducing mediation as an alternate forum of dispute resolution. The Act resonates with every major concern that an honest consumer may face. This may also be a warning signal to mischievous players indulging in unfair market practices. The burden of accountability and caution is now shifted to manufactures, sellers, and service provider, giving more power to consumers.

The advertisers or advertising agencies and endorsers have to work within the ambit of existing laws and cannot start a campaign which is false and if it has been started will have to be discontinued when contested. Hence, consumer researchers have to be very careful about the contents of advertisement and it should not contain any statement which is untrue or false. Nevertheless by increasing self-awareness alone, consumers will be able to behave in a way that is more consistent with their personal preferences. Hence rationality in decision-making and awareness of consumer rights is sine qua non for ensuring ethical consumerism.

References

- Hawkins. D., Roger, Best. R. J., Coney. K. A & Mookerjee. A. (2007). *Consumer Behaviour Building Marketing Strategy*. Tata McGraw-Hill Publishing Company Limited.
- Jain. P.C. & Bhatt. M. (2008). *Consumer Behaviour in Indian Context*. S. Chand & Company Ltd).
- Teena Bagga and Bhatt. M. (2013). A study of intrinsic and extrinsic factors influencing consumer buying Behaviour Online. *Asia-Pacific Journal of Management Research and Innovation*, 9(1), 77-79.
- Consumer Affairs. (2021, October 28). https://consumeraffairs.nic.in/sites/default/files/file-uploads/misleading-advertisements/misleading_advertisement_and_consumer%20%281%29_0.pdf
- Sindhushree. M. T. (2018). A study on the influence of fairness cream advertisements on the purchase behaviour and belief system of youth in Mysore. *IJMET*, 9, 496- 99.
- Ghimire. N. & Rao. A. (2013). Comparative evaluation of the influence of television advertisements on children and caries prevalence. *Global Health Action*, 6, 1-5. tandfonline.com/doi/pdf/10.3402/gha.v6i0.20066@zgha
- Jerry. L. G., Clyde., Dent. C. W. & Stacy. A. (2013). Exposure to alcohol advertisements and teenage alcohol-related problems. *Paediatrics*, 131, 369-372.
- Christopher. J. Ferguson., Munoz. M. E. & Medrano. M. R. (2011). Advertising influence on young children's food choices and parental influence. *Science Direct*, 452-456.
- Simon, J. W. and Calnan. M. (1991). Key determinants of consumer satisfaction with general practice. *Family Practice*, 8, 237-241.
- Muhammad. E.M. (2014). The impact of advertisement and consumer perception on consumer buying behaviour. *International Review of Social Sciences and Humanities*, 6, 55- 57.
- Department Of Consumer Affairs. (2021, October 28). <https://consumeraffairs.nic.in/organisation-and-units/division/consumer-protection-unit/consumer-rights>
- Rashmi Jha. (2021, August 07). Laws Against False Advertisement. *Ipleaders Blog*. <https://blog.ipleaders.in/laws-false-advertisement>
- Consumer Affairs. (2021, October 28). https://consumeraffairs.nic.in/sites/default/files/file-uploads/misleading-advertisements/misleading_advertisment_and_consumer%20%281%29_0.pdf
- Mohammed. T. N. (2018). Impact of false/misleading advertisement to consumer behaviour. *IJEER*, 6, 453- 455.
- Department Of Consumer Affairs. (2021, October 21). <https://consumeraffairs.nic.in/organisation-and-units/division/consumer-protection-unit/consumer-rights>
- Section 2(1) of Consumer Protection Act 2019
- Section 10 of Consumer Protection Act, 2019
- Section 10(1) of Consumer Protection Act, 2019
- Section 21 of Consumer Protection Act, 2019
- Section 89 of Consumer Protection Act, 2019
- Horlicks Limited & Anr. V. Zydus Wellness Products Limited, CS (Comm) 464 of 2019 accessed at <https://indiankanoon.org/doc/169448954> on 21/10/2021
- Section 2(18) of Consumer Protection Act, 2019
- McCracken. G. (1989). Who is the celebrity endorser? Cultural foundations of the endorsement process. *Journal of Consumer Research*, 16, 310-314.
- Section 21 of Consumer Protection Act, 2019
- Saurajay Nanda and Ray. A. (2021). False Or Misleading Advertisements:

Francis Vadakkan V The Propreitor,
A-One Medicals & Ors. [https://
www.mondaq.com/india/dodd-frank-
consumer-protection-act/1028526/
false-or-misleading-advertisements-
francis-vadakkan-v-the-propreitor-a-one-
medicals-ors](https://www.mondaq.com/india/dodd-frank-consumer-protection-act/1028526/false-or-misleading-advertisements-francis-vadakkan-v-the-propreitor-a-one-medicals-ors)

Sinai Deutch. (1994). Are consumer rights
human rights? Osgood Hall Law Journal,
32(3), 537-578.

Neena Aneja & Anr. v. Jai Prakash Associates
Ltd, Judgment dated 15th March 2021
passed in Civil Appeal Nos. 3766-3767
of 2020