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To Obtain The Attention Of The Consumers



RESEARCH FEATURE

Indian Advertising Landscape
And Controversial
Advertisements

INTERVIEW

Shri Subhash Kamath
Chairman, ASCI

PLUS

ROUND UP • MY MARKET • THE PRESCRIPTION



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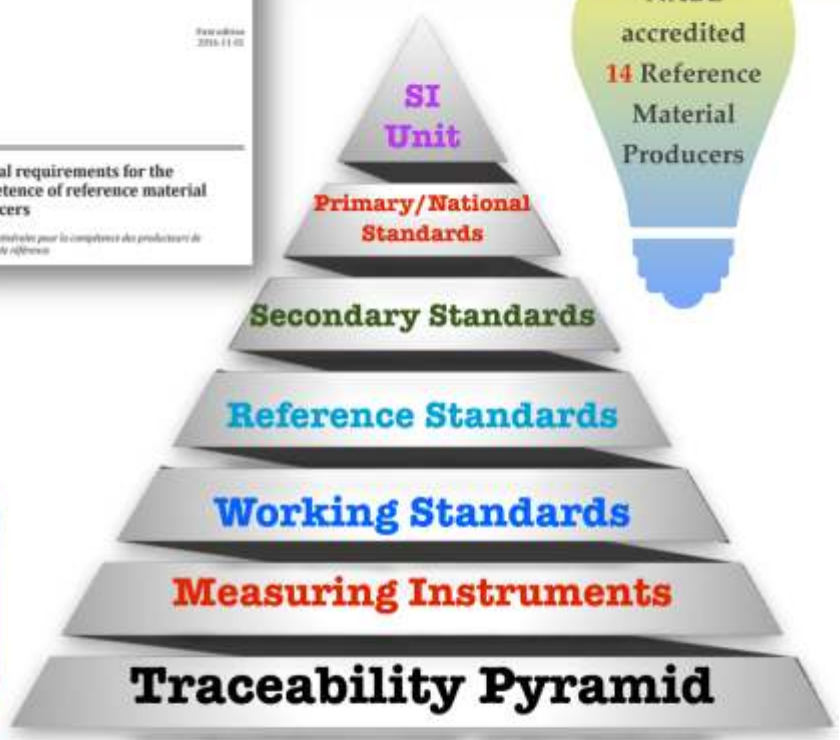


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MESSAGE FROM PUBLISHER & EDITOR

Why Do We Need to Regulate Advertising?

THIS IS A big question.

Every year, companies and governments set aside huge advertising budgets. Why? Do we need advertising? What purpose does it serve?

To begin with, advertising calls the public's attention to a product, service or need. It plays a critical role in society by:

- Drawing attention to a product or service
- Telling consumers how much a thing costs
- Keeping consumers up to date with new developments
- Making consumers aware of different brands
- Promoting and stimulating competition
- Creating jobs
- Helping fund media
- Helping fund culture and sport
- Helping businesses make a profit
- Helping change society's behaviour
- Promoting brand loyalty
- Informing consumers where and how to access products and services
- Warning people about dangerous activities
- Being a source of entertainment

However, it has been perceived that in advertising, self-regulation works best within a regulatory framework and has numerous advantages for consumers and advertisers as well as the regulators like in India.

It is true that advertising functions as a vital element of the economy by informing consumers of the different products and services available.

However, unless self-regulation is effective, it cannot ensure that advertising is responsible and can be trusted. For this, it should bring in penal provisions for flouting the advertising code and also provide a protective cover to the consumers.

With regulation, consumers get a platform to not only voice their concerns but also be heard. It serves as an additional layer of consumer protection, ensuring that ads do not cross the line of decency, or are false and misleading. Consumers can complain quickly, at no cost, and it becomes the responsibility of the advertiser to prove that its advertisement did not breach the code, rather than the complainant having to prove that it did.

For the advertising industry too, it helps maintain consumer trust and brand reputation. Consumer trust in a brand is crucial to corporate success and this makes brand reputation extremely important. Advertising self-regulation, through the promotion of responsible advertising, helps build consumer trust in brands, which in turn builds brand loyalty, increases sales and strengthens market share.

Prof. Bejon Kumar Misra
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bejonmisra@theawareconsumer.in

TRUST THE EXPERT SOLUTION FOR YOUR MULTIPLE SKIN PROBLEMS

Sweat is a natural and healthy bodily function. However, sweat trapped in your skin folds, friction and lack of ventilation cause multiple skin problems such as redness, rashes, prickly heat and even fungal infections.

Your regular prickly heat or cooling powder only provides temporary relief. Candid Dusting Powder contains Clotrimazole which is globally proven for its long lasting* effectiveness against multiple skin problems** making it the Expert Skin Solution.

NO. 1 **DOCTOR'S PRESCRIBED** ⁺
BRAND



Why Candid Dusting Powder is the Expert Skin Solution	Candid Dusting Powder	Normal Prickly heat/ Cooling powder
Formulated with globally proven antifungal agent	✓	✗
Ensures prickly heat rash/boils do not lead to fungal infection	✓	✗
Proven long lasting solution* and not temporary relief	✓	✗
Effective against itching, irritation, redness and rashes caused due to fungal infections	✓	✗

1 EXPERT SOLUTION FOR 4 SKIN PROBLEMS



PRICKLY HEAT ~



REDNESS



RASHES



FUNGAL INFECTION



ADVERTISING

A Necessary Evil That Must Be Controlled

WISHING ALL THE READERS A HAPPY AND PROSPEROUS 2021 !

THERE IS NO denying the power of advertising. For manufacturers, sellers, service providers and even the governments, advertising is indispensable if they want to reach out to the target audience. You may manufacture the best product in the market, but unless you connect with the right consumers and educate them about your product features or enlighten them about how it fulfills a need, your product may die unsung. In the service sector too, advertising helps create awareness about the service on offer. Be it a hotel selling its ambience, or a tutor selling his mathematics' teaching skills to class 12th students, it is advertising that sells their services. For governments, advertising through mass media is the best way of creating awareness about their laws, schemes and plans. It serves to educate the citizens on various important and critical issues that concern them.

Advertising impacts consumers subliminally. Throughout a single day, they are exposed to advertising in hundreds of ways - from the morning newspaper, social media, internet, hoardings, billboards, kiosks, buses, auto rickshaws, television and FM radio to every possible surface that can be used to shout out about a product, a service, a scheme or some such thing. Without you even being aware of it, all these advertisements impact the mind and create a want, even if there is no need, propelling

you to purchase more and more. Advertising thus drives a culture of endless consumption without a thought for sustainability. It drives consumers to shop on credit, create credit card debts and fall into the EMI trap.

We cannot deny that advertising is a necessary and powerful medium of communication. Yet, precisely because of the influence it wields over society and consumers, there is a need for responsibility in advertising. In this milieu, the draft "Central Consumer Protection Authority (Prevention of Misleading Advertisements and Necessary Due Diligence for Endorsement of Advertisements) Guidelines, 2020 on misleading advertisements released by the Ministry of Consumer Affairs, Government of India in August, is a much-needed step in the right direction.

Such a law to monitor and control advertising is essential, as in the absence of penal provisions, the self-regulatory framework under the Advertising Standards Council of India (ASCI) can play a facilitating role to CCPA in controlling the vast advertising sector, including the emerging digital advertising space by seeking inputs from ASCI in a regular manner as an adviser to CCPA.

Advertising is a necessary evil, but like all things evil it must be closely monitored and controlled if it is to retain its goodness. ▶



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RESEARCH FEATURE

INDIAN ADVERTISING LANDSCAPE AND CONTROVERSIAL ADVERTISEMENTS



Over the years, several controversial advertisements have come up that were promptly banned after a public outcry.



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HORIZON

SELF-REGULATION OF ADVERTISING



Regulating advertising is tough; hence advertising self-regulation plays a major role in keeping a check on the advertising industry.



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INTERVIEW



Shri Subhash Kamath
Chairman, ASCI

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MY MARKET

SOCIAL MEDIA ADVERTISING FOR GOVERNANCE



Government pushes its departments to adopt social media through its Policy Guidelines for Empanelment of Social Media Platforms with the Bureau of Outreach and Communication.



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OUT OF THE BOX

PHARMACEUTICAL ADVERTISING LAWS



There is no single law to govern advertising in the pharmaceutical sector although it is regulated through various regulations.



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IN FOCUS

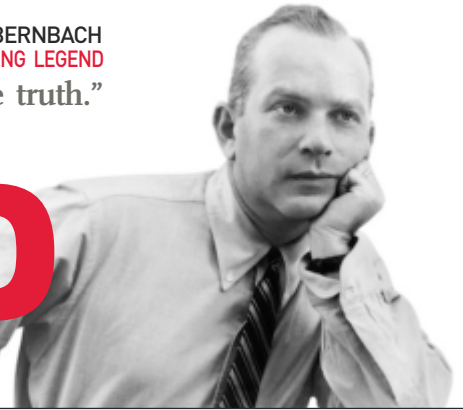
ALCOHOL ADVERTISING PROMOTES DRINKING AMONG TEENS



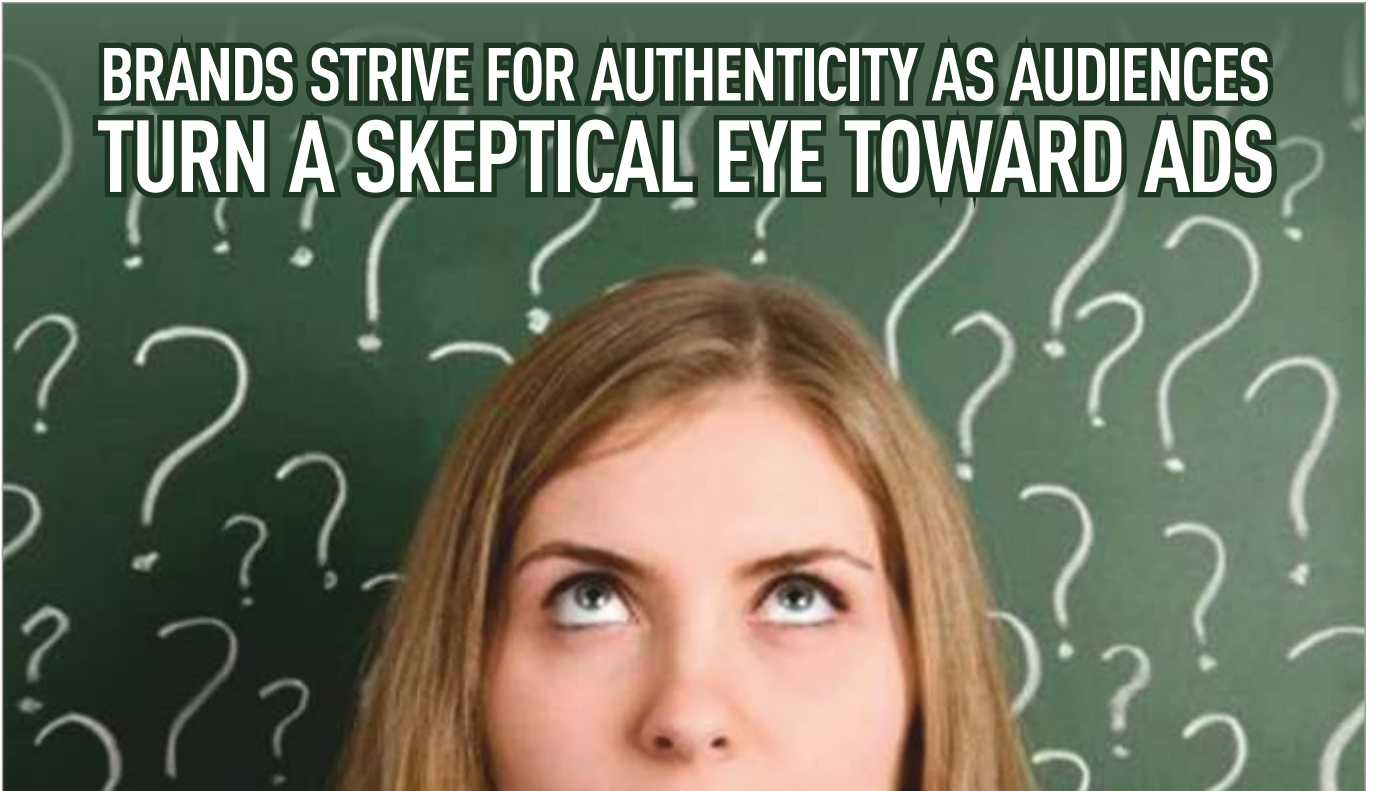
BILL BERNBACH
AMERICAN ADVERTISING LEGEND

“The most powerful element in advertising is the truth.”

ROUND UP



BRANDS STRIVE FOR AUTHENTICITY AS AUDIENCES
TURN A SKEPTICAL EYE TOWARD ADS



Stop Baiting Consumers

The draft guidelines for misleading advertisements lay down comprehensive rules to protect the consumers from unscrupulous marketers, manufacturers and endorsers..

DATA BRIEFING

₹ 20 Billion

– The FMCG sector was the largest investor in the Indian advertising industry in 2019 accounting for over 30 percent of the total spending on advertising in that year.



IMAGE: PIXABAY

Advertising must be honest and not act as a bait to trap consumers.

ON 6TH SEPTEMBER, 2020, the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs), Government of India, released a draft of the Central Consumer Protection Authority (Prevention of Misleading Advertisements and Necessary Due Diligence for Endorsement of Advertisements) Guidelines, 2020 for public consultation. The draft was placed in the public domain for comments and reviews of the public that could be submitted to the Ministry by 18th September, 2020.

The seven critical requirements for a valid advertisement as laid down by the draft are as follows. An advertisement must:

- contain truthful and honest representations
- not exaggerate the features of the product
- not portray the basic rights of a consumer as a feature in the product
- not suggest universal acceptance, where it is not present
- not mislead about the risks to consumers' personal security
- not be offensive to the generally accepted standards of public decency

- in case there is any unintentional lapse in the fulfilment of a promise/claim, it should be made good later by prompt action by the advertiser/seller or by showing that the specimen product satisfies the claims. Hence, such unintentional lapses may not completely invalidate the advertisement and give the advertiser/seller a chance to make good, the deficiency in his product.

Intellectual Property Laws and Advertisements

India's lax intellectual property laws are notorious. It is hence noteworthy that the draft guidelines unambiguously prohibit copying or imitating other advertisements or promotions. This stipulation has been brought in with the intention to prevent unscrupulous advertisers from confusing or deceiving consumers about brands and slyly leading them to associate one brand with another. What this means is that sellers can not only no longer copy trademarks, trade dress, labels and the like, but are also prohibited from copying advertisements.

Any comparisons being drawn between the advertiser's product with its competitor in an advertisement must also be fact-based and related to

specific features of the product. In no way should the advertisement provide an unfair advantage to the advertiser over that of the competing product.

Surrogate Advertisements

When the government banned advertising of tobacco and liquor products in mass media, surrogate advertising raised its ugly head. The draft guidelines duly note the menace of proxy advertising and expressly prohibit such advertisements. To decide if a particular advertisement is surrogate or not, the authorities will take into account whether the unrestricted product that is being advertised is being sold in reasonable quantities.

Further, while puffery (exaggeration) is permitted, the draft mandates that any objective claim made in an advertisement should be supported by evidence and the advertiser should be capable of substantiating the said claims. This effectively targets advertisements of products in the health and beauty categories that resort to unsubstantiated claims and are prone to exaggeration.



Advertised As 'Free' Only If Free

The draft guidelines also tackle another area of concern- advertisements promising a good or service as 'free', 'without charge' or in such other similar terms, but having hidden costs.

The guidelines state that if a consumer has to pay anything other than the unavoidable cost of responding to the advertisement and collecting or paying for the delivery of the item, then such terms cannot be used. Therefore, if consumers have to pay for packing, packaging, handling or administration, then that good or service cannot be advertised as free. But the hidden charges exclude delivery charges or charges incurred for collecting the item. The guidelines clarify that “delivery charges” are not a part of “administration” or “handling” charges.



Many sellers resort to the practice of promotional offers where goods are offered free on the purchase of another. However, the price of the product of the good is increased in such offers while the 'free offer' acts as a bait. For instance, say, a pair of trousers that costs Rs. 1200 is hiked to meet the cost of the pair being offered as free. The draft further forbids manufacturers from reducing the quality or quantity of a product that a consumer has to purchase to take advantage of a free offer.

Terms as “free trial” or “satisfaction or your money is back” cannot be used in advertisements if availing the offer requires a “non-refundable” purchase.

Endorsements To Become Tricky

Actors, sports persons and celebrities, including social media influencers, beware - the draft guidelines on advertising and endorsement disclosures could hold you responsible for any false or misleading claims. You will need to exercise caution as to who you associate yourself with as the guidelines put the onus of verifying all claims made by the manufacturer regarding a product or service directly on the shoulders of the endorsers and influencers.

Endorsers will be responsible for due diligence and the guidelines present a comprehensive list of conditions for endorsers. These include -

- **Substantiate claims:** As an endorser, it will be your responsibility to ensure that any claims being made by you in the advertisement can be substantiated.
- **Ensure veracity of claims made by manufacturer:** This will certainly be tricky ground as the endorser or influencer will have to verify that the seller or manufacturer's claim in the advertisement is not false, misleading or deceptive.

However, the draft allows endorsers to seek advice from an advertising “self-regulatory” organization or an independent practitioner to ascertain the honesty of the claims in endorsements. This would amount to due diligence. What this implies is that such a body or legal





It's impossible to look away from a truly horrifying dental catastrophe as this ad clearly demonstrates.

practitioner would have to vouch for a company's claims and to do so they would have to undertake research to verify the claims of a product.

In case the endorser is supporting a product or service through a testimonial, the guidelines require that the person should be a "bona fide" user of the product at the time of endorsement. This provision effectively covers endorsements on social media, where it is common for influencers to claim experience with a product to motivate their followers to use it as well. This stipulation is in line with the guidelines prescribed for endorsers in the United States.

The guidelines also require endorsers to disclose their relation to the manufacturer, trader or advertiser of the product. It states that any such connection that might impact the credibility of the endorsement and that the customer is not "reasonably expected" to be aware of, must be mandatorily disclosed.

Endorsers are not liable for any penalties or legal action currently, except in the case of food products. Last year, the Food Safety and Standards (Advertising and Claims) Regulations prescribed penalties on endorsers for false claims about products.

The guidelines put a spanner in so-called "expert" endorsements by prescribing that any such "experts" must possess the necessary qualification to prove their expertise in the area as purported in their endorsement message. An expert endorsement will have to be supported by an actual demonstration of that expertise in evaluating the product.

What Is 'Valid' Advertisement Now?

The guidelines prescribe new and thorough criteria for an advertisement to be considered "valid". However, several of these prescribed conditions are vaguely worded and are open to wide interpretations.

Honest and truthful representations: Advertisements that contain "truthful and honest representations" of a product will be considered as valid. Therefore, no exaggeration of a product or service is allowed. However, puffery is allowed, i.e., obvious exaggerations that are unlikely to be taken seriously by a consumer.

Scientific opinion will matter: No advertisement can disregard divided scientific opinion on a product and claim its benefits to be universal. This means that an advertiser cannot claim that a product will give a result - say for example, an oil will cure baldness - if a section of scientists has disputed it.

Decent ads only: Offensive advertisements will not be allowed. All ads will have to abide by "generally accepted standards of public decency" in the country and in no way should they cause "grave and widespread offence" to the consumer. However, this provision is open to wide interpretation as the guidelines do not specify the generally accepted standards of public decency in India.

Misleading About Risk

This provision gains prominence in the backdrop of the pandemic. Advertisements misleading consumers into

believing that if they don't buy a certain product claimed to be a "lifesaver", they are at risk, will not be allowed.

However, unintentional mistakes are allowed in advertisements. The guidelines elaborate that in cases where a certain claim made in an advertisement is not fulfilled because of "occasional, unintentional" lapses during manufacture and distribution, such an occurrence would not invalidate the advertisement. But this would hold only as long as the proportion of product failures is within "generally acceptable" limits and the advertiser accepts such a failure to the consumer.

Disclaimers And Fine Print

Advertisers cannot use disclaimers simply to hide any information that could make the advertisement deceptive. In other words, if a misleading claim is made in the advertisement, the advertiser cannot resort to using the disclaimer to correct this deliberate omission or misleading information.

Further, disclaimers have to be in the same language as the advertisement and the font should be the same as the claim. The disclaimer must be prominently placed on the packaging. It should be clear, prominent enough and legible, clearly visible to a normally sighted person who can read it from a "reasonable distance and at a reasonable speed". If a claim is made as a voice over (VO) in an advertisement, the disclaimer must also be made as a VO.

These rules propose to bring an end to the practice of fine print disclaimers in advertisements -especially of mutual funds and insurance products - that habitually place lengthy disclaimers at the end of a TV ad or at the bottom of a print ad. Most consumers tend to skip this or are unable to read them due to the fine print.

New Duties for Manufacturers, Service Providers and Advertising Agencies

It is the duty of manufacturers, service providers and advertising agencies to ensure that the claims made by them in the advertisements are truthful and honest representations of the product or service.

Claims must be substantiated, if required, by a Central Authority. The source and date of the independent research or assessment on which the claims have been based must be available with them.

No reference to a person, firm or institution can be made without their permission. References cannot be used in a way that gives the product an "unjustified advantage". Nor can such references be used to cause a person, firm or institution "ridicule or disrepute". Special care and restraint has to be taken regarding advertisements on health issues or any real or perceived "inadequacy" of any physical attribute such as height, weight, impotence, infertility and baldness. The claims must not exceed the considered parameters of "prudent" standards of medical practice.

Striking at the menace of mushrooming misleading lottery advertisements, the guidelines allow advertisements for lottery games only if participants are informed in unambiguous terms about their actual chances of winning. All pertinent material and terms and conditions should also be provided.



All ads will have to abide by "generally accepted standards of public decency" in the country and in no way should they cause "grave and widespread offence" to the consumer.

Stop Baiting Customers

Flash sales can become a thing of the past as the draft guidelines put restrictions on baiting consumers. Bait advertising is an unscrupulous practice adopted by sellers to attract consumers to buy a product which is marketed as being sold "at a steal". But once the consumer falls for the bait, the product is then shown to be out of stock and the consumer is guided to buy a similar, but expensive, product.

The guidelines mandate that manufacturers ensure adequate supply of the goods or services to meet the demand generated by bait advertising. In case the supply is short, the advertisements must mention that stock is limited. Advertisements cannot entice customers to buy something if there is no "reasonable prospect" of it being sold at the price offered in the advertisement.

Conclusion

The draft guidelines, by tightening the noose on misleading advertisements, take a step ahead in strengthening the consumer rights movement in India. In the age of e-commerce and social media marketing, these rules are the need of the hour and must be implemented forthwith. ▶

Source: Secondary research & media reports



DISPO VAN

THE TRUSTED BRAND
PROMOTING PATIENT SAFETY

**MADE IN INDIA,
CURING PEOPLE
AROUND
THE GLOBE**



Precision Engineered, Affordable & Easy to use.

Consumers, Beware

Advertising Rules In Evolution Mode

Consumers must stay abreast of global developments in the field to be better armed about their rights.



Consumers must wake up and smell the coffee.

THE COMPREHENSIVE DRAFT guidelines on advertising have consumers' best interests at heart. However, unless consumers are made aware of these rules and empowered to flag any misleading advertisements they encounter, the rules would remain a paper tiger.

Not only in India, elsewhere in the world too, governments are cracking down on false and misleading advertisements. Netherlands allows the use of a celebrity's lookalike in advertising only if it is clear to the public that the endorser is a lookalike. Moreover, in no way should the advertisement make the consumers think that the real celebrity supports the advertiser's products and no actual damage should occur. This decision was taken by the Amsterdam Court of Appeal on 2nd June, 2020 in a case between Max Verstappen and Picnic. A short film in which both the appearance and clothing of the person acting in it and the scenario referred to the performance of Verstappen in advertising films for supermarket chain Jumbo, was under consideration.

The Court of Appeal ruled that the lookalike of Max is not a portrait of Max within the meaning of the law and therefore, there was no question of a portrait right infringement. It further ruled that the publication of the film was otherwise not unlawful as it does not damage Max's reputation. Also, the public will not believe that Max supports Picnic as the latter maintains a sufficient distance from the real Max. Further, Max's business interests in publishing his portrait will not be affected.

These considerations of the Court of Appeal are relevant to the world of advertising everywhere. The use of a well-known person in advertising in this case has been treated in the context of a parody that is obvious to the public.

In India, parodies are generally classified under the defense of 'fair use'. As per Section 52 of the Indian Copyright Act, "a fair dealing with a literary, dramatic, musical or artistic work for the purposes of criticism or review, whether of that work or of any other work will not amount to copyright infringement". This effectively permits parodies in the form of criticism, satire or reviews. The Indian Copyright Act, 1957 (the "Act") defines a "performer" and includes an actor, singer, musician, dancer, juggler, conjurer, acrobat, a person delivering a lecture or any other person who performs under its definition. This definition has been interpreted to extend and include certain types of celebrities like actors.

However, under the law, the protection granted to a performer extends mostly to performance rights and a celebrity may not be able to seek damages for abuse of personality. Thus, there is no specific provision in Indian trademark law to protect publicity and image rights. While other Indian laws do have the scope to protect publicity, celebrity and image rights, they are quite ambiguous and need to be more direct and codified. The era of social and digital media opens up a vast scope to infringe on such rights. As tracking such infringement online is still a developing field, the need for a law to protect celebrity status and right to personality is urgently needed.



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Another development in the world of advertising that has vast implications for India is the proposal in the UK to ban all online junk food advertising to tackle obesity. The proposal has enthused health campaigners but has brought gloom to the advertising industry. UK unveiled plans to implement a total ban on online junk food advertising – making it the toughest digital marketing restriction in the world. UK, as other parts of the globe, is

battling a growing obesity crisis. The advertising industry though has termed the proposed legislation as indiscriminate and draconian.

The new rules, once implemented, will impact all foods that are considered to be too high in fat, salt and sugar. Critics expect collateral damage in the form of a range of foods, including some healthy ones, coming under the ban courtesy of the junk food label.

The rule was prompted in the aftermath of the corona virus infection that puts overweight people at risk of more severe forms of illness or even death. In England, research has found that one in three children leaving primary school are either overweight or obese. Almost two-thirds of adults in England are also said to be obese.

The legislation is backed by latest research that states that children are increasingly exposed to online junk food advertising. It is estimated that children aged under 16 were exposed to 15 billion junk food advertisements online in 2019. Two years ago, the figure was pegged at 700 million.

The legislation will have far-reaching impact if implemented, as the ban will be applicable to digital marketing, including advertisements on social networking



The government has estimated that UK children under 16 were exposed to 15bn junk food adverts online last year.



sites, paid-search results on Google and text message promotions.

A world-leading policy to improve children's health, it is a forward-looking strategy and must be adopted in India too as we are quickly evolving into a leading hub of non-communicative diseases.

Meanwhile, the draft guidelines prescribe a long list of rules for advertisements that target children. Advertisements cannot:

- Condone, encourage or emulate behavior dangerous to children. They cannot condone or encourage bullying or support practices that can be detrimental to the children's health or well-being.
- Exaggerate features of a product or service that could lead children to having "unreasonable expectations" from them.

- Imply that if the children don't use a product or service, they would be ridiculed or considered inferior and less popular. For instance, through this rule, a certain TV ad, aired regularly across the country, in which children make fun of a certain "Bunty" for not using a particular soap, could be deemed invalid.
- Encourage children to persuade their parents, guardians or others to purchase something for them.
- Use words like "just" and "only" to make the price of a product or service seem less expensive.
- Feature personalities from the field of sports, music or cinema for products that require a health warning or cannot be purchased by children.
- Make it difficult for children to judge the size, characteristics and performance of advertised products or to distinguish between "real life situations and fantasy".
- Encourage children to participate in charity-linked promotions.
- Encourage children to copy unsafe practices.
- Feature children for tobacco or alcohol-based products.

Conclusion

The advertising regulations across the globe are evolving to factor in the new developments brought on by social and digital media. For consumers, it behooves that they should be aware of these laws and thus be armed to protect any infringement of their rights. ▶

Source: Secondary research & media reports

Indian Advertising Landscape And Controversial Advertisements

Over the years, several controversial advertisements have come up that were promptly banned after a public outcry. The government and the Advertising Standards Council of India, the self-regulatory voluntary body that acts as the conscience-keeper of the advertising sector, come up with advisories from time to time prompted by any such incident against the accepted norms and flag it.

INDIA'S ADVERTISING LANDSCAPE is no stranger to court controversies. From time to time, advertisers indulge in creating controversial ads that grab eyeballs even as they raise the hackles of certain sections of the society. As these ads gain attention for all the wrong reasons, they leave one wondering about the laws that are supposed to regulate advertising in the country. Let us take a look at some of the ads that gained notoriety.

The first that defies logic is the one by Paytm. This ad stars cricketing icon Sachin Tendulkar and goes on to glorify a young child being slapped. How could the advertisers miss India's stringent laws on corporal punishment? Section 17 of the RTE Act, 2009, imposes an absolute bar

on corporal punishment. It prohibits physical punishment and mental harassment to children and prescribes disciplinary action to be taken against the guilty person in accordance with the service rules applicable to such person. Though there are many acts and conventions which protect children from corporal punishments, currently, there's no statutory definition of corporal punishment of children in Indian law. Yet, different Indian laws cover corporal punishment adequately to safeguard the rights of the children. It is hence surprising that an ad featuring not just a celebrity, but a legend, went against the law.

A recent advertisement by Amul, a humorous take on the popular notion that





Keeping a check on controversial advertisements.

IMAGE: PIXABAY

corona virus originated in Wuhan, China, had the social media netizens in a knot. While some appreciated the wry humor, others found it insensitive given the touchy nature of the situation. 'Wuhan Se Yahaan le aaye' advertisement does seem to be in bad taste as not only



is the Indo-China relationship at an all-time low, but it also appears to be deliberately courting a global controversy.

Another ad of Amul calling Indian consumers to boycott Chinese goods faced a backlash and the Gujarat Cooperative Milk Marketing Federation's Twitter account, which owns the Amul brand, was blocked shortly after the cartoon ad was posted. Seemingly endorsing Prime Minister Narendra Modi's call of 'Atmanirbhar Bharat' as well as an appeal to boycott Chinese goods, the ad attracted huge support against the temporary ban on Twitter. Many users accused the micro-blogging platform of bias against India.





Another ad that was in the centre of a Twitter storm was from Zomato that played on the popular cuss words 'MC BC'. The ad was put up on huge billboards and converted the abbreviations to mean 'mac-n-cheese' and 'butter chicken'. But some people upbraided Zomato for bringing profanity into mass media space.

Ads that stoke religious sentiments or communal feelings have also found space in Indian advertising. Recently, a huge controversy erupted over Tanishq's advertisement with the detractors claiming that it was promoting "love jihad". As Tanishq capitulated to public pressure following the uproar and took down the advertisement from its social media handles as well as its official YouTube channel, this too did not find favor with a section of people who felt this would give more power to the Hindutva lobby.



In 2017, Meat and Livestock Australia showcased Lord Ganesha eating a lamb in an advertisement. With the theme 'You Never Lamb Alone', the commercial wanted to demonstrate that everybody loves to eat lamb regardless of what their religion and belief is. The advertisement showed a host of other Gods from different religions, but the Hindu community was offended, and the ad was later banned in India.



A Manforce ad starring actor Sunny Leone used Navratri to sell condoms in Gujarat and the brand was forced to withdraw it after a huge public outcry. Celebrity hairstylist, Jawed Habib's ad featuring Indian Gods in his salon also faced a community backlash. Habib had to issue a public apology and remove the ad.

Vulgar and indecent ads have also had their 15 minutes of fame. A Lux Cozy ad was so vulgar that the Ministry of Information and Broadcasting ordered a ban on it, terming it 'indecent, vulgar and suggestive'. A 1995 ad for Tuff Shoes, which featured models Milind Soman and Madhu Sapre wearing nothing but shoes with a python wrapped around their body was also banned and the models were charged with indecent behavior in a court. A 1998 Calida ad for innerwear showed actor Dino Morea pulling off Bipasha Basu's underwear with his teeth. It goes without saying that this was also banned after widespread protests. In 1991, a Kamasutra Condoms ad stirred a hornet's nest and was banned for being 'too steamy'. It featured actors Pooja Bedi and Marc Robinson. In 2012, Zatak Deo ad was declared as "indecent, vulgar and suggestive." by the Advertising Standards Council of India (ASCI) as it showed women lusting over men who used the brand's deodorant. ASCI was directed to ensure that the ads were either modified or taken off air.

Government Advisories to Regulate Advertising

From time to time, the government as well as ASCI issue advisories to keep a check on all such advertising that exploit consumers or defy the expected standards. These advisories are displayed on the ASCI website. Let us take a look at some of the recent advisories and their purpose:

Advisories to Regulate Covid-19 Advertising

ASCI issued an advisory to regulate advertisers on Covid-19 claims as manufacturers introduced a large number of products and services to meet the needs of the consumers in this environment. The advisory guides advertisers so that their advertisements meet the requirements of the ASCI Code's Chapter I related to truthfulness and honesty of representation and, thus, continues to build consumer confidence in advertising.

The advisory states that the advertisers of Ayurvedic, Unani, Siddha and Homeopathy products and services should abide by the Order of Ministry of AYUSH dated April 1, 2020, on corona virus (COVID-19) advertisements and avoid claiming destruction or removal of any virus other than corona virus (COVID-19) in order not to violate provision of ASCI code's clauses 1.4 ("Advertisements shall neither distort facts nor mislead consumers by means of implications and omissions....") and 1.5 ("Advertisements shall not be so framed as to abuse the trust of consumers or exploit their lack of experience and knowledge..."). In case advertisers choose to claim removal of any other virus in their advertisement, they should include a disclaimer such as "Claim not applicable to corona virus (COVID-19)"

or a similar message with the disclaimer size and position as per the Disclaimer Guideline of ASCI.

Advertisers were also advised to be particularly careful whilst making claims, directly or indirectly, to reduce the chances of becoming infected with corona virus (COVID-19) or gain immunity against it. Advertisers should be able to substantiate any such claims of immunity against or treatment for corona virus (COVID-19) supported technical support recognized or approved by health authorities such as WHO, ICMR, MoHFW, AYUSH, DCGI, CDC (USA) or health organizations of similar stature or by well-recognized medical/technical literature or by regulatory-approved clinical research conducted by a recognized medical institute/laboratory. Products which are not internally consumed or applied on the body, i.e., not requiring license under the Drugs & Cosmetics Act, should be particularly cautious while making claims regarding prevention of, immunity against or treatment for corona virus (COVID-19) unless they have claim-support data, the ASCI advisory said.

Notably, Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy (AYUSH), Government of India had issued an order on 1st April, 2020 directing all concerned ASUSH Regulatory Authorities in the States/Union Territories to stop and prevent publicity and advertisement of AYUSH-related claims for COVID-19 treatment in print, TV and electronic media and take necessary action against the persons/agencies involved in contravening the relevant legal provisions and the guidelines of NDMA.



Guidelines to Regulate Insurance Advertising

In October 2019, the Insurance Regulatory and Development Authority of India issued a comprehensive set of guidelines to regulate insurance advertisements. The idea prompting this advisory was the need to bring in transparency into the publicity material and make it relevant, fair and in simple language to enable informed decision-making regarding the purchase of a specific insurance product. The circular divided these advertisements into institutional and insurance ads. Institutional ads are those that promote the brand image of the insurer while insurance ads are those as defined in Advertisement Regulations.

All insurance advertisements have to follow certain do's and don'ts as prescribed in the guidelines – general and specific. Some of the general do's that insurance ads must comply with include:

- Communications must be clear, fair and not misleading and present the information in a legible and accessible manner.

- Sales material should be comprehensible in the light of the complexity of the product being sold
- The mandatory disclosures should be in the same language as the ad
- Any insurance advertisement highlighting the benefit of guarantees must provide a clear disclosure of underlying conditions under which the guarantee operates

Some major don'ts include:

- The design, content or format should in no way disguise, obscure or diminish the significance of any statement, warning or other matter which an advertisement should contain as required by the provisions.
- The guidelines prohibit the use of any logos, brand names, or distinguishing symbols already existing in the market that can confuse the consumer.
- It disallows the use of terms or phrases that convey a fabricated sense of security to the consumer.
- Life insurance advertisements should not offer any kind of inducement in the form of awards or reward points, discounts, rebates etc., except those approved by the Authority.

The guidelines also lay down the provisions of communication in the digital and telephonic mode.

Regulating Advertisements on Electronic Media

Advertisements masquerading as news items on TV channels were flagged in 2017 and an advisory was issued by the Ministry of Information & Broadcasting directing all TV channels to follow the relevant provisions of the Advertising Code scrupulously and exercise caution in this regard. Some TV channels had been found indulging in telecasting advertisements and promotional programmes including those of institutions/organizations offering educational/financial solutions or solutions for medical problems etc., which were masqueraded as news items, thereby misleading viewers. An earlier advisory in 2014 had also raised the issue of channels making unsubstantiated claims and violating the provisions of the Code for Self-Regulation as well as the provisions of the Drugs & Magic Remedies (Objectionable Advertisements) Act, 1954.

Conclusion

Notwithstanding regulations for advertising, misleading advertisements or advertisements that flout the rules have been rampant. Government and ASCI advisories work as a reminder to the advertisers, sellers and manufacturers if they have crossed the line. It is hoped that more stringent laws will act as a deterrent to unscrupulous advertisers and will also empower the consumers to flag such advertising. ▶

Source: Secondary research & media reports

Access to **Safe Drinking Water** is a Human Right

KENT

Mineral RO™

Water Purifiers

HOUSE of PURITY

Make Water
100% Pure
and Protect Your Family
from Waterborne Diseases



KENT TECHNOLOGY

Removes Dissolved Impurities
Retains Essential Minerals
Multiple Purification

RO + UV + UF + TDS Control

Kent Deta Hai

**Sabse
Shudh Paani**

MOBILE ADVERTISING



Mobile advertising
gains traction rapidly.

IMAGE: PIXABAY

The Next Frontier

Marketers are discovering opportunities offered by mobile advertising as the Covid-19 pandemic pushes up mobile penetration and usage in India.

INDIA'S SMART PHONE base is projected to reach 820 million in the next two years, according to a report jointly released by the Indian Cellular and Electronics Association and consulting firm KPMG in July this year. This could unlock 80% improvement in efficiency and 8 times reduction in processing time for e-governance services, the study said. For advertisers though, the increasing reliance of consumers on mobile devices has opened up a new avenue for a powerful form of direct advertising. Mobile video has emerged as the main priority for marketing professionals across Asia Pacific (APAC), with YouTube and Facebook dominating mobile video consumption.

A study by WARC and MMA (Mobile Marketing Association) titled 'The State of the Industry: 2020 Mobile Marketing in APAC' reveals the impact of mobile phones as perceived by brands, agencies, media owners and tech vendors. "Asia Pacific is a leader in mobile adoption and will likely continue to be so", says the report. It further states that nearly all marketing professionals (95%) in the region consider mobile advertising as effective.

Mobile adoption got a huge momentum during the COVID-19 pandemic as more and more people had to rely on their devices. From students to housewives, all categories of consumers had to move online to fulfill their diverse needs. The pandemic also pushed the mobile to the forefront as a significant channel in the purchase journey of consumers.



It's a big topic, though...

- **Facebook mobile ads:** There are 2.6 million monthly active users on Facebook, and 78% of users only use Facebook on mobile.
- **Instagram mobile ads:** 80% of users say that they use Instagram to decide whether or not to buy a product or service. And due to Instagram's limited functionality on desktop, it's best to view it as a mobile-only advertising platform.
- **Google mobile ads:** There are 3.4 billion Google searches a day, and 64% of those searches are from mobile users.
- **Snapchat mobile ads:** Snapchat, a mobile-only platform, has 210 million users daily.

So we'd better get started right away!

The report provides a current snapshot into how brands, agencies, media owners and tech vendors see the impact of mobiles. It captures their views on mobile phones as a tool for advertising effectively as well as the opportunities and concerns, particularly in disruption, brought on by the pandemic.

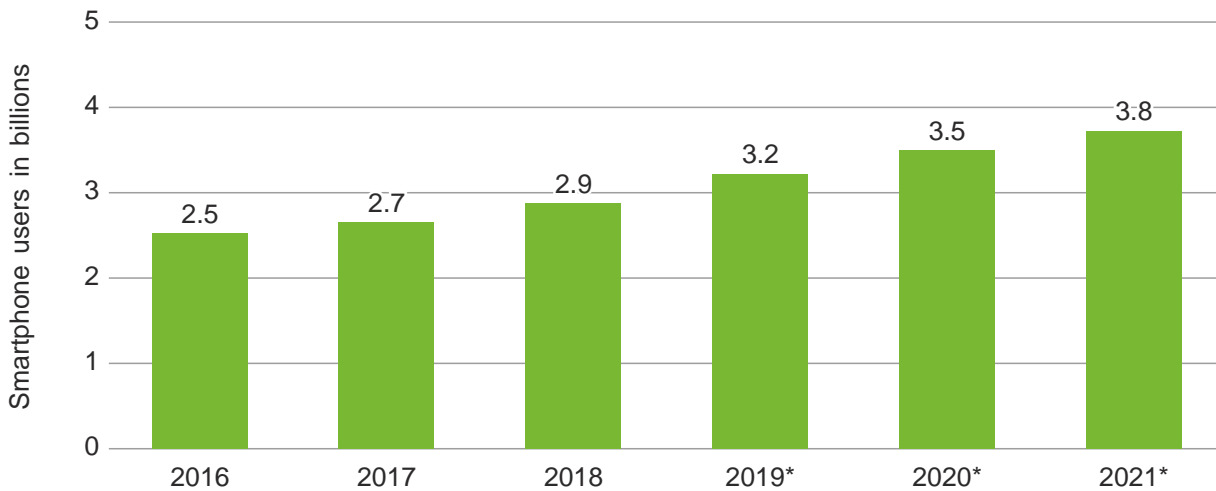
For the report, 591 marketing professionals across APAC were surveyed in June and July 2020 by WARC, which is the global authority on marketing effectiveness. The study was conducted on behalf of the MMA, the world's leading global non-profit trade association. MMA has members from every faction of the mobile marketing ecosystem.

Mobile advertising is definitely the new frontier for sellers looking to tap a wider market. The key insights from the report highlight how mobile advertising will now be the main focus for marketers in APAC including India.

Mobile Video and Location Data are Big

A significant consumer behavior that is shaping the advertising strategy is the preference for watching videos. Half (48%) of marketers across APAC (45% in India and 36% in Indonesia) said they were planning to focus on mobile videos in their advertising. Social video apps like Facebook and

Number of smartphone users worldwide from 2016 to 2021 (in billions)



YouTube are popular means of advertising.

Mobile data of consumers is a mine of information and among these, for marketers, location data is the biggest technology. Nearly half of the respondents (46%) agreed that it offers unique opportunities to reach highly targeted audiences.

COVID-19 Impact: Hiked Mobile Budgets

The increasing mobile consumption during the pandemic has led nearly two-fifths (38%) of marketing professionals across APAC to allocate more than 30% of their budget to mobile marketing. This is a straight seven percentage point increase from 2019. In India, one-fifth (20%) are allocating more than 35% and in Indonesia one-quarter (26%) are allocating more than 40% of their marketing budget to mobile advertising.

Despite the COVID-19 impact on budgets that has led 30% of respondents across APAC (27% in India and 46% in Indonesia) to expect their mobile budgets to decrease, the mobile channel is among the least impacted by the pandemic as mobiles consumption has increased manifold.

Metrics and Measurement Remain Elusive

Though the mobile is regarded as a highly effective channel, with almost all respondents (95%) of the survey saying so, measuring its impact poses challenges. For marketers, serving the humongous data generated is challenging. They are yet to figure out which metrics to measure and how to use the data efficiently.

In general, engagement metrics are used to measure mobile effectiveness as evidenced by the survey. The report said 68% respondents across APAC (63% in India, 71% in Indonesia) are dependent on it. The use of business metrics is also growing year on year, increasing from 53% of marketers in APAC in 2018 to 57% in 2020. In India, 55% are using behavioral metrics and 69% in Indonesia.

Mobile Specific Content

Mobile is a different category of media and requires tailored content. No wonder, nearly three-fifths (58%) of APAC marketers said they were creating mobile-specific content as a strategy to improve engagement, while majority of marketing professionals (84%) are considering ad length and

design for mobile when creating mobile content.

Personalization is the way forward in mobile advertising and in India, the majority (69%) of respondents use personalization to increase engagement. In Indonesia, 60% are doing the same.

As m-commerce grows rapidly, it is also driving developments in shoppable ads and live video shopping.

Conclusion

Though the pandemic has led to reduced budgets on advertising, marketers in APAC are investing big in mobiles. The mobile channel has led to newer opportunities for marketers in the form of mobile video, social and m-commerce, which is helping them engage more effectively with target consumers.

Mobile phones have consistently been an effective marketing channel and the pandemic has served to bring out its importance by providing opportunities to marketers even during the crisis. Mobile advertising has become a disruptive force and is playing a pivotal role in shaping the future of modern marketing. ▀

Source: Secondary research & media reports

Self-Regulation Of Advertising

Regulating advertising is tough; hence advertising self-regulation plays a major role in keeping a check on the advertising industry.



Self-regulation plays a big role in keeping advertisers in check.

IMAGE: PIXABAY

REGULATING ADVERTISEMENTS HAS never been an easy task. The issue is complicated by the fact that commercial speech is part of Freedom of Speech and Expression as has been upheld by the Supreme Court. Freedom of Speech and Expression is a fundamental right under article 19 (1) (a) of the Constitution of India.

This makes regulating advertisements a veritable hot potato. Over the years, while several legislative provisions were instituted with the intention of keeping a check on advertising, no uniform code or law was established to deal with all aspects of advertising. The industry too strongly resisted any attempt to create a uniform advertisement code or institute a single regulator.

So, for long, the Indian advertising industry has largely been following a self-regulation policy. The Advertising Standards Council of India (ASCI), which acts as the self-regulatory body of the industry, regularly publishes and updates fair advertising guidelines which are known as ASCI codes. All member organizations need to adhere to these codes that are meant to protect the interests of the consumers.

The ASCI has remained the only self-regulatory body. But apart from it, the Reserve Bank of India (RBI), the Securities and Exchange Commission of India (SEBI) and the Insurance Regulatory and Development Authority of India (IRDAI) have also played an important role in regulating advertisements in their respective domains. As regards the broadcasting sector, state-owned broadcasters Doordarshan and All India Radio (AIR) adhere to the Doordarshan and AIR Advertisement Code which is under the control of Prasar Bharati (government-owned public broadcasting agency) formulated under the Prasar Bharati Act. The Department of Consumer Affairs has also been at the forefront of protecting consumer interests by providing an online channel for consumers to post their grievances against misleading advertisements.

However, Indian advertising is now headed for a complete overhaul. The Consumer Protection Act 2019, which updated a 1986 legislation, revolutionized the way the industry is monitored by establishing a Central Consumer Protection Authority. It is headed by a government-appointed Chief Commissioner and is set up in New Delhi to regulate violations of consumer rights, unfair trading practices and false or misleading advertisements.

In August 2020, the Ministry of Consumer Affairs announced it will soon come up with draft guidelines aimed at regulating and keeping a check on misleading ads. Thereafter, the Ministry released the draft guidelines to curb misleading ads and protect consumers who may be exploited or affected by such advertisements. The full regulation named "Central Consumer Protection Authority (Prevention of the Misleading Advertisements and Necessary Due Diligence of Endorsement of Advertisements) Guidelines, 2020" was released in the public domain for suggestions and comments.

Prior to this, Indian advertising was self-regulated by the Advertising Standards Council of India (ASCI).

Global Self-Regulation of Advertising

Globally, the International Council for Advertising Self-Regulation (ICAS) acts as the platform promoting responsible ads through the effective implementation of self-regulatory standards. The body believes that responsible advertising gives us value and choice, while entertaining and informing consumers. For media industry, advertising is the biggest source of funding. Advertising industry also funds sports and culture, which otherwise would either become unsustainable or require the cost to be passed on to consumers.

Apart from its commercial role, advertising also acts as a direct force for social good. Social advertising raises awareness and encourages people to contribute to deserving causes and charities. Mass media advertising is an important element to make people aware of their duties and responsibilities. For example, discouraging people from drinking and driving and currently in Covid-19 times, encouraging people to follow social hygiene to stay safe. Advertising also drives competition, provides jobs and powers the economy.

Despite its important role in society, there is also a negative side to it. Advertising can be irresponsible, misleading, harmful or offensive to people. For instance, advertising for alcohol and tobacco products by attaching prestige to the consumption of such products encourages people to

consume them. Unsubstantiated or unscientific claims by sellers through advertising mislead consumers into buying them. There are many other ways in which advertisers resort to practices that are not in the interest of consumers. This makes effective ad self-regulation indispensable.

Self-regulation induces responsibility in advertisers. It provides a safety net for people and society through quick, flexible and efficient rules that are often in conjunction with the law and at no cost to the taxpayer.

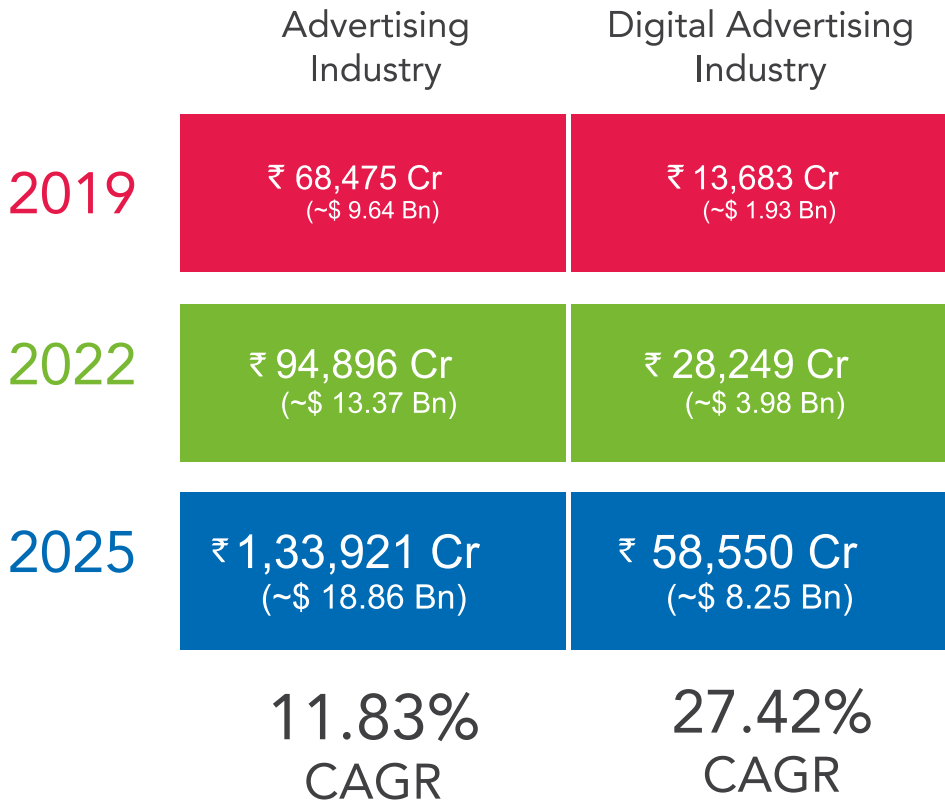
Ad self-regulation is encouraged as it also benefits the advertising industry. People feel more confident in the ads they see or hear as they trust advertisers. It also provides a level playing field as all advertisers play by the same rules.

The objectives pursued by ICAS therefore look to:

- Exchanging best practices around ad self-regulation and working on common solutions to the global challenges faced by the advertising industry. These challenges include, for instance, the digitalization of the economy and new attitudes towards the use of personal data.
- Facilitating the establishment of new Self-Regulatory Organizations (SROs) in emerging markets and empowering them to grow.



INDIAN ADVERTISING INDUSTRY AS OF 2019



- Promoting self-regulation worldwide and highlighting its benefits for consumers, businesses, regulators and society as a whole.

An executive committee of senior experts in advertising self-regulation, with the support of a permanent Secretariat based in Brussels, Belgium, manages the body. The ICAS General Meeting is the top-level governance body responsible for deciding and overseeing the network's strategy and activities.

ICC Advertising Toolkit

In July 2020, the International Chamber of Commerce (ICC) released a toolkit to ensure responsible and compliant advertising self-regulation. The toolkit was prompted by the realization that the lack of common understanding on how self-regulation and advertising concepts work in practice. It comprises key messages and practical examples that provide relevant stakeholders with a clear picture of the benefits associated with advertising self-regulation.

The ICC toolkit, titled, 'The Benefits of Advertising Self-Regulation in Ensuring Responsible and Compliant Advertising', outlines the advantages of advertising for

business, consumers and local communities. It incorporates the self-regulatory principles enshrined by the ICC Advertising and Marketing Communications Code (ICC Code), which is used as a global reference for international best practice. The toolkit was supported by ICAS Members who contributed to its development.

It includes a scorecard with key elements for the effective implementation of advertising self-regulation frameworks. The scorecard, which ropes in elements of the ICC Code, lists the creation of a self-regulatory body, appeals procedure and publication of documents, as among the best-practices for implementing effective advertising self-regulation.

Conclusion

Consumer trust is indispensable for brand reputation and effective advertising. The ICC toolkit too emphasizes the importance of responsible, ethical, and compliant advertising and marketing practices. The document explains how advertising and marketing self-regulation protects citizens, strengthens consumer trust, builds trust among businesses and complements existing national legal standards. ▶

Source: Secondary research & media reports

New Guidelines Set To End Bad Advertising in India

Broad in its vision, the guidelines bring the entire advertising industry under its purview.



Putting an end to bad advertising.

IMAGE: PIXABAY

SMARTPHONE PENETRATION HAS risen from 9% in 2015 to 25% in 2018 in rural India and India's smartphone base is estimated to reach 820 million in the next two years. The indices highlight how rapidly we are developing as a nation. But the downside is that there are few laws to monitor the content that is being consumed by the masses.

In the context of advertising, mobile advertising has become the new frontier that unexpectedly received a giant push during the pandemic as consumers started shifting online. As a result, mobile ad spending is predicted to rise 38% in India over the next year, according to a report entitled 'New Normal – India and Southeast Asia: 2020' by Mobi. The report adds that the corona virus pandemic has led to a major shift in the way marketers are looking at spending their budgets, with 60% planning to focus on performance-based campaigns with ROI linkage. Over two-thirds of marketers are looking to enhance their digital ad budgets to keep pace with shifting consumer behaviors. Digital ad spending is estimated to rise 33% over the next 12 months. In-app advertising has also received a boost with 87% of marketers looking to increase spending by up to 40% in the area. And spending on in-app ads is predicted to double in the near future.

What does all this mean for the Indian consumer? Apparently, more targeted advertising to push purchases. What makes this scenario a cause for concern is the absence of a mechanism to check the bad apples in the advertising sector. The newly awakened Indian consumer, who has become a glutton for digital consumption, lacks the discerning powers of the more evolved western consumers. Digital platforms have opened up a hitherto unknown world for India's masses. And unscrupulous advertisers can easily exploit this naïveté.

But digital media is not to be blamed for bad advertising alone. False advertising that uses dishonest, erroneous, misleading or baseless information to advertise or promote products and services to consumers, has been present in many forms – print ads, television and radio commercials, billboards, transit ads, in-flight ads, etc. These ads that make false claims are present everywhere and there is no escaping their lure. Advertising drives consumption, but when it drives unsustainable consumption, pushing the world to the brink or driving consumers to buy products that can harm them or their environment, it definitely is bad advertising.

India Clamps Down on Bad Advertisements

Bad advertisements take many forms. They can be created to deliberately mislead existing and potential consumers; or a business whose products are harmful can advertise to create a false impression that it is a company with a human heart. For instance, a company dealing in animal skin and fur products advertises promotions of wildlife protection.

Cases of bad advertisements are everywhere and

governments and courts have been taking a strong stance from time to time to protect the consumers from such advertisements.

Looking at the lack of a regulatory structure to guide and control the country's advertising sector, the newly formed Central Consumer Protection Authority (CCPA), in September this year, issued extensive guidelines designed to regulate advertising and clamp down on misleading claims and practices.

Experts are sounding the warning bell for companies advising them to review their advertisements and communications to ensure compliance. Under the new rules, violations can attract severe legal penalties and may lead to bigger brand reputation costs.

The Consumer Protection Act, 2019 came into force on 20th July 2020 and close on its heels the CCPA was established with the mandate to regulate matters relating to violations of consumer rights, unfair trade practices and false and misleading advertisements.

The CCPA, under the powers invested in it, issued the Prevention of Misleading Advertisements and Necessary Due Diligence for Endorsement of Advertisements Guidelines. The draft guidelines cover all forms of advertising and marketing communications.

It is noteworthy that as the definition of an advertisement (under the new Consumer Protection Act, 2019) covers ads on electronic media, the internet and websites, it includes digital platforms, e-commerce websites and social media websites as well.

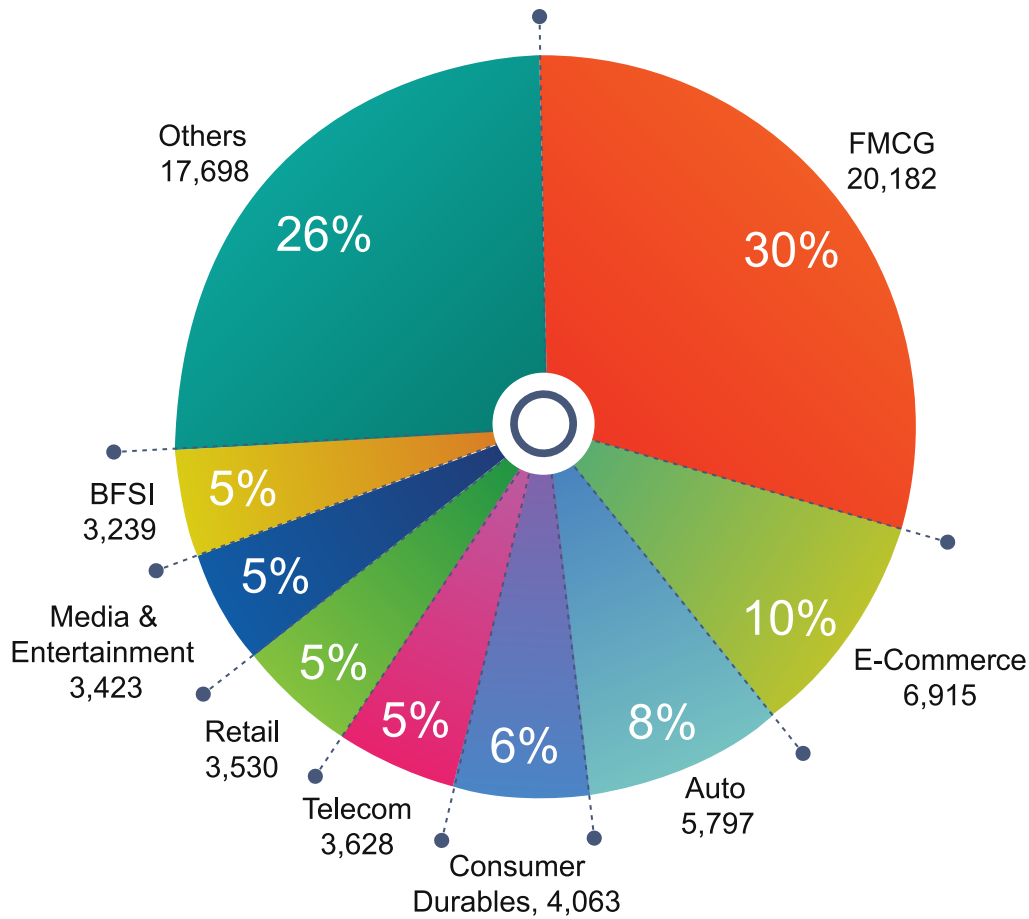
The guidelines state that advertisements should contain truthful representations and should not mislead consumers. There are also express provisions that prohibit imitation advertising, making it clear that ads should not be too similar to others. It lays out that no ad should be similar in general layout, copy, slogans, visual presentation, music or sound effects to another advertisement or promotion.

The purpose of this stipulation is to prevent ads from misleading or confusing consumers between two or more products. It has been a common practice for manufacturers to come up with brand names, logos and products that are rip-offs of original products and thus mislead the consumers into buying an imitation that masquerades as a close copy of the original. This provision will safeguard consumers from being fooled by any misleading claims and will also protect the reputation and identity of the established brands. This provision, thus, not only safeguards consumer interests but also protects manufacturers from damage.

Tough on Endorsements

The draft guidelines effectively try to kill two birds with one stone – the long debated issue of third-party endorsements, i.e., endorsements and its recent digital media offshoot – influencer advertising. Do endorsers, brand ambassadors or influencers have a liability regarding the products they advertise? The draft guidelines seem to have settled this debate for the Indian advertising industry by fixing the responsibility on celebrity endorsers and

AD SPENDS BY INDUSTRY VERTICALS (INR CR)



influencers. It tacitly recognizes that such advertising is a powerful tool for pushing product consumption and celebrity endorsers or social media influencers cannot escape their share of accountability in this phenomenon. But for long questions have been raised regarding the responsibility of the endorser to vet the products that they are promoting.

Influencer advertising especially needs to be controlled as it has a wider digital reach and deeper trust factor. It is not uncommon to find social media influencers endorsing a product without disclosing that they are being paid to do it. They flaunt these products as their latest purchase, talk about favorite brands and even endorse the products' efficacy or quality without using them at all. For fans, these influencers are trustworthy as they do not know that this is commercial advertising and believe their feedback to be honest.

Influencer advertising also has a murky association as so-called social media influencers buy followers and even bots to puff their followers' numbers and are generally little-known outside their circle of influence. They are not celebrities in the traditional sense but become overnight social media sensations.

The new law would empower the followers to sue such influencers. Further, hefty fines can be imposed for misleading advertising which can go up to ₹10 lakh for the first offence and up to Rs 50 lakh for repeat offenders.

Looking at the exploding social media advertising scenario, it is a timely step to hold influencers, who rake in big bucks, accountable. It must be mandatory to distinguish commercial advertising from just social influence.

Notably, in November 2019, actors Govinda and Jackie Shroff were fined by a court for endorsing products as part of infomercials – another kind of advertising that has a blurred line between truth and fiction. The judgment was five years in the coming.

Mandatory disclosure about the nature of the endorser's engagement will also go a long way in ensuring transparency. The guidelines require the endorsers to make full disclosure of their 'material connection' (i.e., their stake in the manufacturing company or the product), in case 'the connection is not reasonably expected by the audience'. The guidelines cover all sorts of endorsements – personal, expert and even endorsement of a fictitious character.

Thus, the rule to make the endorser responsible for conducting due diligence to ensure that the claims they make in ads can be substantiated, is the right move. Endorsers have been given some relief too, as the due diligence in practice would be deemed to have been fulfilled if the endorser obtains advice from an “advertising self-regulatory organization or a legal opinion from an independent legal practitioner”. The due diligence will have to cover companies and brands, and also that all 'descriptions, claims and comparisons' made by products that they endorse or that are made in advertisements they feature can be factually verified.

Children Get Due Protection



IMAGE: PIXABAY

Protecting children from the impact of bad ads is a priority.

Another important aspect covered by the guidelines concern ads targeted at children. The guidelines mandate that such ads should not condone or encourage behavior in children that could be dangerous to copy, nor should they directly exhort children to purchase a good or service or to persuade their parents or guardians to do so.

This stipulation will have a profound impact on manufacturers of goods and services targeting children.

Advertising directly to children has been a global concern and various governments have been trying to bring in legislation to protect children. For example, in November, representatives of the food sector in Belgium signed the Belgian Pledge: a promise to restrict their advertising to children under 12. Fifty-two food sellers, traders, caterers and restaurant chains as well as the food industry federation Fevia, the retail federation Comeos and the Belgian Advertising Union (UBA) signed the Pledge. The Pledge is the third of its kind. In 2012, the first Pledge was signed concerning advertising on TV, children's websites and in schools. The second Pledge in 2017 extended the restriction to social media, mobile advertising, SMS marketing and games.

Self-regulation of ads that target children has failed widely. In the US, child-targeted advertising is a multibillion-dollar endeavor, with \$4.2 billion spent on

marketing to kids in 2018. The American Psychological Association, along with other researchers and legal scholars, has indicated that advertising to young children is unfair and misleading. This is because children under the age of 8 have not yet developed the cognitive ability to understand that advertising is persuasive and biased, so they take ads at face value. For these reasons, the National Financial Educators Council conducted a survey – the Advertising to Kids survey – to reach a better understanding of how Americans feel about marketing to young children. From November 5th to 9th 2020, 3,002 citizens around the US were asked three questions: whether they thought companies should advertise to kids under 8; whether they thought junk food companies should market to kids under 8; and whether they believed marketing to young kids was unethical.

Survey participants overwhelmingly believed that companies should not advertise to children under 8 years old. When asked "Should companies advertise to kids younger than 8 years old?" – 80.2% of respondents answered, "Definitely No" or "No". And data from the question regarding the ethics of marketing to young kids indicated an even stronger belief, with 57.8% of participants responding, "Definitely Yes" or "Yes" to the question, "Is advertising to kids younger than 8 years old unethical?"

The guidelines hence take the first step in this direction, but a lot more needs to be done if we are to ensure that children, who are the most impressionable consumers, are not exploited through advertising.

Conclusion

The draft guidelines are expected to have a significant impact on advertising practices in the country – or more specifically, their regulation. Though Advertising Standards Council of India's (ASCI) general rules regarding advertising have been in place, the self-regulation regime to ensure the honesty and veracity of representations has not been very successful as the linkage with the regulators were missing in India. The CCPA, with new powers, is hence expected to ensure advertisers are more mindful of the violations. The ASCI code guidelines were advisory in nature, but the new guidelines are enforceable and have statutory backing. It is hoped that the guidelines will prove to be a more effective mechanism to curb the unfair trade practices in the advertising domain with technical support from organisations like ASCI and leading voluntary consumers groups in the States.

The implication for advertisers', especially international brands, is that they must seek legal review of their advertisements to ensure compliance with the statutory regulations to avoid financial and reputational damage from the legal consequences.

The guidelines, by embracing all the manufacturers, service providers, advertising agencies and brand endorsers and making them accountable for any misleading claims in advertising, is sweeping in its purview. ▀

Source: Secondary research & media reports

“The context in which ASCI functions has been transformed... need to think hard about our codes & guidelines, review them frequently”



Subhash Kamath, Chairman ASCI
on how the self-regulatory body has been impacted by the changing consumer protection scenario and the draft guidelines and what role it sees itself playing in the future.

Q As the Chairman of ASCI what are your priorities as per the vision and mission of ASCI?

A lot has changed in recent times. It's a more digital world now, especially after Covid-19.

The business, marketing and social contexts have also been altered. At ASCI, while we continue to build on what we've achieved in the past, we must be even more future-facing and relevant in this changing environment. The need to be more responsible as marketers & advertisers is even more critical in today's society.

There is also the new Consumer Protection law and the Central Consumer Protection Authority that has been constituted. Therefore, the context in which ASCI functions has also been transformed. So, we need to think hard about our codes & guidelines, review them frequently, and add new ones keeping in line newer categories and situations that come up.

So, my priorities would be to make ASCI more future-focused, through better collaboration with all stakeholders, better speed and responsiveness, more savvy about the digital/ social ecosystem and provide more thought leadership and advisory value to the industry.

Q With the CCPA regulating misleading ads, what role do you see the ASCI playing as a voluntary initiative?

World over, even in developed countries like the U.S, UK, Australia etc., advertising self-regulatory bodies have worked successfully in partnership with the government regulators.

In India too, we have worked closely with FSSAI, the Ministry of Ayush, Ministry of Information and Broadcasting (MIB) etc. Over the past five years, we've had MOU's with the Department of Consumer Affairs (DoCA) by which all complaints lodged in their Grievance Against Misleading Advertisements portal were processed and adjudicated by ASCI and non-compliance was reported to DoCA for action. So, we look forward to partnering with the CCPA too.

Also, the CCPA is focused on misleading ads, while the ASCI code covers three other chapters, apart from the one on misleading/ false claims i.e., indecent/ offensive, unsafe and harmful products/situations, and unfairness in competition.

Moreover, last year, 82% of complaints processed by ASCI against misleading claims came out of our National Advertising Monitoring Service (NAMS). Through it, we monitor print, television and now digital media. ASCI will continue to process complaints picked up via NAMS. Even intra-company complaints, including fast-track requests, should continue to come to ASCI. On our part, we'll continue to focus on the good work we've been doing for the past 35 years.

At the end of the day, both CCPA and ASCI have the same objective: protection of consumer interest.

Q Do you feel the Central Consumer Protection Authority (Prevention of Misleading Advertisements and Necessary Due Diligence for Endorsement of Advertisements) Guidelines, 2020 will be effective in



preventing unfair trade practices and protect the interest of the consumers?

The CPA heralds a new age of consumer empowerment by giving it real teeth. So, marketers have to become more responsible and diligent when it comes to advertising claims. So we welcome this move.

Q How has social media and the new era of social media influencer impacted the advertising scenario? Will the new rules curb this phenomenon?

The digital space is evolving rapidly, and it's a constant challenge for our industry to keep pace with newer technology, evolving platforms and mediums, including social media. The lines between advertising and content are blurring. Use of influencers, bloggers, Vloggers is changing the very definition of advertising and how brands are using them to engage with their consumers.

We've been in step with the times by constantly updating our code and processes, and we'll continue to do so. For instance, we recently started monitoring the digital space for misleading advertisements. We monitor 3,000 digital platforms in addition to print and TV monitoring through NAMS. We now cover most of India's media spend. Newer platforms like OTT or online advertising are no different than conventional media when it comes to ASCI codes and how we process complaints. Social media influencer guidelines for India seem to be the need of the hour and ASCI is examining codes on influencer marketing of global SROs for that. But yes, a lot more needs to be done on that front and that's what we're focusing on.

Q What about celebrity endorsement? How do you see this changing?

India has always been a celebrity obsessed country and celebrity endorsements will always be a big part of Indian advertising. But in today's context, these celebrities



who earn huge bucks from brands, must do due diligence to ensure that the ads they appear in do not violate our codes or mislead consumers. They have to be mindful of what they attach their name to because they have the trust of millions of consumers. They will now be held accountable.

Q What exactly is false or misleading or unfair advertising? Can you give some examples?

The ASCI code covers four chapters: misleading claims, indecent/offensive messages, unsafe and harmful products/situations, and unfairness in competition advertising.

Misleading or false ads: Advertisements should not be misleading. They should not exploit consumers' lack of knowledge and abuse their trust. All descriptions

Over the past five years, we've had MOU's with the Department of Consumer Affairs (DoCA) by which all complaints lodged in their Grievance Against Misleading Advertisements portal were processed and adjudicated by ASCI and non-compliance was reported to DoCA for action. So, we look forward to partnering with the CCPA too.

– Subhash Kamath
Chairman ASCI

claims and comparisons should be capable of assessment - ads cannot distort facts, abuse the trust of consumers or lead to widespread disappointment. For example, products cannot be described as "free" if there is any direct cost involved, other than actuals such as delivery, freight or postage. If a product is offered free with another, then the price should not exceed that of the prevailing price of the product paid for. Or for that matter, if a brand claims its efficacy as "2X Stronger", it needs to be substantiated with technical data which is reviewed by technical experts in our complaints committee.

Unfair ads: Advertisements should observe fairness in competition so that the consumer's need to be informed on choices in the market and the canons of generally accepted competitive behaviour in business are both served. Advertisements should not unfairly denigrate other products. Comparisons need to be factual, accurate and capable of substantiation. It should be clear in the advertisement what aspects of the advertiser's product are being compared with those of the competitor's.

Q Does self-regulation play a big role in advertising? How far do you feel ASCI code of advertising is effective?

I've always said that "With great creative power,



comes great responsibility". So, I believe self-regulation is extremely critical when one has the power to persuade millions of people to buy a particular brand or service. Whether it's in not misleading the consumer or how we depict women or use children or offensiveness etc., we all need to be responsible and know where to draw the line ourselves.

Self-regulation is key for businesses to maintain and build on the trust consumers have in their products and services. All our members who've signed up have taken that pledge to follow our codes. And happily, we've had compliance rates of over 90% over the years. Our members are by and large very responsible marketers, and they know the importance of self-regulation. So, yes, I'd say the ASCI code has been quite effective.

Q You find all kinds of misleading ads online, especially in the health and wellness sector. Is there any mechanism to prevent these and protect consumers or legal recourse over misleading claims that failed?

Yes, we have NAMS, which I mentioned earlier too. Through this mechanism, we track nearly 600 TV channels, 400 publications and more than 3,000 digital platforms on an ongoing basis to suo motu pick up potentially misleading advertisements. In the last three months alone, the NAMS team has scanned nearly 3,00,000 ads. Through this, we are also able to identify misleading advertisements in the healthcare sector. Last year, we evaluated complaints against 3,111 advertisements, of which over 25% of the advertisements were from healthcare.

Q What about surrogate advertising? ASCI claims it has been monitoring possible surrogate advertising and has put in place daily updates on brand extension advertising of alcohol and tobacco brands. Yet these ads appeared with impunity. Your comments?

The key thing here is what is a 'surrogate for liquor'

(the advertising for which is not allowed in India) and what is a 'genuine brand extension', which is allowed to advertise. We had put down clear guidelines for that almost 7-8 years ago. These guidelines outline objective criteria to qualify for a genuine brand extension to be followed by advertisers. We do track advertisements for violations. It is important to note that the MIB has allowed TV ads to be broadcast as long as they get a CBFC certificate, and ASCI only looks at non-TV ads for compliance with its code. We have noted with satisfaction that, recently, CBFC also adopted similar quantitative criteria as required by ASCI, bringing greater consistency in the way liquor brand extensions are looked at. But this is something that will continue to be reviewed and fine-tuned at our end.

Q What steps has ASCI taken to empower consumers to differentiate between misleading and deceptive advertisements in India?

ASCI has initiated several awareness building campaigns through print, radio and social media, and also MIB's advisory to run ASCI's scroller on TV channels.

We have made it extremely simple for consumers to complain about misleading claims in advertisements. Consumers can file a complaint online, via e-mail and telephone, and even post. Perhaps the simplest way is through the dedicated WhatsApp number (7710012345). All the consumer has to do is send the complaint as a WhatsApp message.

We have also undertaken numerous awareness initiatives through regular media outreach and a robust communication via social media.

Lastly, ASCI is a knowledge organisation and so we have instituted e-learning programmes through which consumers and professionals can learn ASCI's codes and guidelines.

All of this represents a simplification of the process and has resulted in growing awareness. ■



Pyush Misra
Director,
Consumer Online Foundation

Regulation Of Government Advertising

Delay in setting up committees on content regulation of government ads may be construed as contempt of Supreme Court's order: CCRGA



IMAGE: PIXABAY

Government advertisements must be regulated to ensure they do not misuse public money for self-promotion.

IN JULY, THE Supreme Court-mandated Committee on Content Regulation in Government Advertising (CCRGA) issued a notice to the Delhi government, seeking clarifications on a recent advertisement placed by it in the Mumbai editions of prominent newspapers. The CCRGA had taken suo-moto cognizance of the points raised in social media on the Delhi government's advertisement – questions had been raised on the necessity of the Delhi government to issue advertisements in Mumbai newspapers and it was also pointed out that the purpose of the ad was only for political messaging. The one-page advertisement was published by the Department of Education and Directorate of Information & Publicity, Government of NCT of Delhi.

However, the Delhi government contended that the CCRGA did not have jurisdiction and that the content of the Delhi government's advertisements are regulated by its own State-level committee.

As per the directions of the Supreme Court issued on 13th May, 2015, the Government of India had set up a three-member body on 6th April, 2016, consisting of "persons with unimpeachable neutrality and impartiality and who have excelled in their respective fields", to look into the content regulation of government-funded advertisements in all media platforms. The CCRGA is empowered to address complaints from the general public and can also take suo-moto cognizance of any violation of the Supreme Court guidelines and recommend corrective actions.

According to the Supreme Court Guidelines:

- The content of government advertisements should be relevant to the government's constitutional and legal obligations as well as the citizen's rights and entitlements.
- The advertisement materials should be presented in an objective, fair and accessible manner designed to meet the objectives of the campaign and to ensure maximum reach in a cost-effective way.
- It should be accurate and not present preexisting policies and products as new.
- The advertisement content should not promote the political interests of the ruling party.
- They must comply with the legal requirements and financial regulations and procedures.

As per the directions of the Supreme Court, all states are mandated to set up their respective three member committees on Content Regulation of Government Advertisements. The states of Karnataka, Goa, Mizoram and Nagaland have already constituted their state-level three member committees. The Chhattisgarh government has given its consent to the Central Committee to monitor the content of its advertisements.

The 19th meeting of the CCRGA was held virtually on 4th September, 2020. The meeting, chaired by Sh. Om Prakash Rawat, former Chief Election Commissioner of India, was attended by two other members, Sh. Ramesh Narayan of Asian Federation of Advertising Associations and Past President, IAA and Shri Ashok Kumar Tandon, part-time member, Prasar Bharti Board.

The CCRGA meeting took serious note of the fact that other states have yet to constitute their respective state level committees. It was of the view that they delay by some state governments in setting up their state-level committees may be construed as contempt of the Supreme Court's order. The CCRGA's attention was also drawn to the fact that some respondents were yet to furnish their replies to the notices issued to them in response to the complaints received by the Committee.

In view of the current Covid-19 pandemic, the Committee decided to allow further time to the respondents to furnish their replies to the notices in all the pending complaints lodged with the Committee.

The CCRGA is of the view that non-compliance of its decisions is a serious matter. The considered opinion was that in the event of any non-compliance of CCRGA's orders, the Committee may be forced to place an embargo on the issue of further advertisements by the nodal agencies of the concerned governments which come under the purview of this Committee.

The Committee may, if necessary, also decide to summon the concerned official of the government agencies dealing with the release of

advertisements, in the event of undue delay in responding to the notices.

Coming back to the Delhi Government, it was given 60 days time from the receipt of the notice to submit its comments to the Committee on the issues of:

- The cost to the exchequer for publishing the mentioned advertisement.
- The purpose of the published advertisement and why it was specifically published in other editions outside Delhi.
- How does this advertisement not violate the Supreme Court's Guidelines of avoiding glorification of political personalities?
- Media plan of the said advertisement with names of publications and their editions may also be furnished.

Conclusion

Government advertisements should be strictly regulated as it involves not just the public exchequer but also the citizens' right to be protected from false and misleading ads. Also, if the government does not regulate its own advertisements, how can it have the moral authority to regulate the advertising sector? ▶

Source: Secondary research & media reports



Social Media Advertising For Governance

Government pushes its departments to adopt social media through its Policy Guidelines for Empanelment of Social Media Platforms with the Bureau of Outreach and Communication.

Government looks at social media for advertising.

IT IS A reality that today, more people are online than ever. Citizens are on social media, and this is where and how they can be reached and engaged.

Social media is indeed the best tool if the government really wants to reach the masses. For government departments that aren't on social media yet or are limited in their engagement, this should act as a wake-up call.

Being active on social media will help the departments to directly connect with the citizens. Especially, government departments that want to achieve their desired policy objectives must use social media channels to communicate with the public in a valuable and meaningful way.

However, social media is a new medium, where old regulations do not apply. The government must have a clear policy to guide the departments in their engagement with social media. The Government of India's Digital India push too, saw it bringing out various guidelines to encourage and facilitate the ministries and departments as also other government bodies to adopt social media.

The Ministry of Information and Broadcasting (MIB) is responsible for disseminating information on government policies, schemes and programmes through multiple mass communication media including radio, television, press, social media, internet websites, printed publicity, outdoor publicity and traditional modes of communication such as dance, drama, folk recitals, etc.

The MIB is also the focal point for policy matters related to the broadcasting sector as well as for administering the public service broadcasting (Prasar Bharati), multi-media advertising and publicity of government policies and programmes, film promotion and certification and regulation of print media. It is the administrative line ministry for Indian Information Services officers who work with other Ministries/Departments to coordinate information and communication activities. The MIB, therefore, has a mission and vision to create an enabling environment for the facilitation and dissemination of knowledge, entertainment and information.

It does this by ensuring effective outreach of the flagship schemes of the government, strengthening public service broadcasting (TV and radio), facilitating development of the broadcasting sector and promoting value-based cinema for healthy entertainment.

The Bureau of Outreach and Communication (BOC) was set up on 8th December, 2017 by integrating the erstwhile Directorate of Advertising and Visual Publicity (DAVP), Directorate of Field Publicity (DFP) and Song & Drama Division (S&DD). The Bureau aims at providing a 360-degree communication solution to the Ministries/Departments/Public Sector Undertakings (PSUs)/autonomous bodies. It acts as an advisory body to the government on its media strategy. With 23 Regional Outreach Bureaus (ROBs) and 148 Field Outreach Bureaus (FOBs), BOC is engaged in educating people, both rural and urban, about the Government's policies and programmes to evoke their participation in developmental activities.



BOC is also the nodal organization for paid outreach campaigns through print media, electronic media, outdoor media, internet websites, etc., on behalf of client Ministries/Departments and organizations of the Government of India in pursuance of para VI (23) of Allocation of Business Rules, 1961 on "production and release of advertisements on behalf of the Government of India."

Need for the Policy Guidelines

A major chunk of the Indian population is presently active on various social media platforms and these numbers are increasing every day. People consume news, information and entertainment on various social media platforms. The increasing ease of access of social media through hand-held devices and ubiquity of the internet has further enhanced the reach of social media platforms.

With the increasing number of people (especially youth) spending time on social media platforms, these platforms can also serve as an opportunity for communication and outreach. They also open up an



At times, there is a need to reach or connect to people who are not connected/linked with the social media handle of the concerned Ministry/Department.

avenue for user engagement which sets them apart from the internet websites. These platforms not only cater to an increasing number of people but also facilitate a targeted approach which helps in reaching out to the desired set of people in an efficient and cost-effective manner.

A number of Ministries and Departments of the Government of India have a significant presence as well as organic reach across various social media platforms which they utilize to connect to the members of the public. However, the organic reach is limited to only such people who have connected with the social media handle of the concerned Ministry/Department. At times, there is a need to reach or connect to people who are not connected/linked with the social media handle of the concerned Ministry/Department. It is important for the Ministry to determine modalities for engaging social media platforms for assured reach. Hence there is a definite need for policy guidelines for engagement of social media platforms so that assured reach may be attained on payment basis to increase the visibility of socially relevant messages.

Objectives of the Policy Guidelines

The objectives of the guidelines include:

- To improve the social media outreach of various Ministries and Departments of the Government of India.
- To institute a policy framework which enables the Ministries and BOC to engage with social media platforms on the basis of various criteria, terms & conditions and processes stipulated in these guidelines.

How the Guidelines Define Social Media

A social media platform has been defined as a web-based and mobile-based internet application that allows the creation, access and exchange of user-generated content. The content on the social media platform may be in the form of text, audio-visual, graphics, animation or any other form prescribed by the BOC from time to time.

Unique users: Unique users refer to the number of distinct individuals visiting a given social media platform over a specified period of time. If a particular user visits the given social media platform, a number of times over a specified period of time, the number of unique users will be counted as one.

Eligibility criteria: The social media platform – a) must fall under the definition as above. b) must be under continuous operation under the same domain name/access address for minimum of six months. c) must have maintained a minimum of 25 million unique users (UU) (from within India) per month (based on the data of three months immediately preceding the date of application). The BOC will use the data provided by comScore or Google Analytics or any other credible agency having industry-wide acceptance to verify the UU count. d) must possess an online panel with demonstrated credibility through which the space/inventory for advertisement is booked. The access of such online panels should be provided to the BOC along with requisite training, if any. All other advertisers/advertising agencies must have access to the same panel as the one provided to BOC.

Process of engagement: The social media platforms shall apply in the prescribed format to the BOC which, in turn, will process the applications based on the eligibility criteria and the job requirement. The social media platforms will have to enter into an agreement/contract with the BOC to be considered for government outreach campaigns.

Conclusion

The Government of India has been rightly pushing for a digitally-savvy governance framework to exploit the wide reach of technological platforms. Social media has a huge role to play in government-citizen communication and in making governance open, approachable, transparent, informative and transformative. ▶

Source: Secondary research and media reports



INDIA'S FASTEST GROWING PATHOLOGY LAB NETWORK

Moving ahead with a vision to provide superior quality diagnostics solutions at affordable prices, Pathkind is present across 10 states through its state-of-the-art 52 Labs and a robust network of 800 + Collection Centres. Equipped with the most advanced technology, every lab conforms to international quality standards to ensure safe & accurate diagnostics experience for everyone

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- Cytogenetics
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Pharmaceutical Advertising Laws

There is no single law to govern advertising in the pharmaceutical sector although it is regulated through various regulations.



There should be a single law to regulate the crucial pharmaceutical sector.

IMAGE: PIXABAY

COVID-19 PROVIDED A happy hunting ground to unscrupulous marketers peddling all kinds of cures for the virus. The general public which was already in a state of disbelief in this unprecedented pandemic was all too eager to clutch at any straws that promised a succor. The scenario also spotlighted, how little we have to offer consumers by way of protection against false and misleading advertising. The absence of strong laws was sorely felt.

The government and related bodies moved in with alacrity to curb the trend through a series of advisories. However, what has now been realized is that pharmaceutical advertising needs tighter laws and aggressive awareness campaigning to apprise the consumers of pitfalls. Let's take a look at how India controls advertising in this sector.

Laws and Codes of Practice Governing the Advertising of Medicinal Products

In India, advertising of medicines is covered by a number of regulations. Some worth mentioning here are: The Drugs & Cosmetics Act 1940 ("DCA") and the Drugs & Cosmetics Rules 1945 ("DCR"); The Drugs & Magic Remedies (Objectionable Advertisements) Act 1954 ("DMRA") and the Drugs & Magic Remedies Rules 1955 ("DMRR"); The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002 ("IMCR"); The Pharmacy Practice Regulations 2015 ("PPR"); The Sales Promotion Employees (Conditions of Service) Act 1976 ("SPEA"); The Uniform Code of Pharmaceutical Marketing Practices ("UCPMP"), which is a self-regulating code; The Code for Self-Regulation of Advertising content in India ("CSRA"), published by the Advertising Standards Council of India ("ASCI"); The OPPI Code for Pharmaceutical Practices 2019 ("OCP"), published by the Organisation for Pharmaceutical Producers of India.

Direct-to-Consumer (DTC) advertising of pharmaceutical products is a sensitive area and companies generally hesitate to advertise medicines or medical devices. Until 2015, the DCA and DCR did not regulate DTC advertising except for the content that appeared on the label of the product. However, the DCR now prohibits the manufacturers of medicines identified in Schedule H, H1 and X of the DCR from any form of advertisement. The law clearly states that no such advertising can be undertaken in the garb of 'public interest'.

Various Definitions of Advertising

Advertising has been defined differently under various laws. For example, the DMRA defines advertising to include "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".

The CSRA's definition of advertising is any "paid-for communication, addressed to the public or a section of it, the purpose of which is to influence the opinions or behavior of those to whom it is addressed". Any communication recognized as an advertisement by the



general public is included in this definition, even those carried free-of-charge. The OCP defines "promotion" as "any activity undertaken, organized or sponsored by a member company which is directed at healthcare professionals to promote the prescription, recommendation, supply, administration or consumption of its pharmaceutical product(s) through all media, including the internet and mobile SMS etc."

How Companies can Ensure Compliance with the Various Laws and Codes of Practice?

Notably, India does not have any formal sign-off on advertisements' requirements. For pharmaceutical advertising, companies must keep a broad set of stipulations in mind. These include:

- Take legal permission (marketing authorization) for the marketing of medicines for a specific therapeutic indication, under the DCA rules.
- Adhere to the prohibition on advertising medicines related to certain identified diseases or disorders as set out under the DMRA.
- Adhere to prohibition on advertising of medicines that induce, improve or maintain sexual pleasure, prevent miscarriage, assure conception or correct menstrual disorders in women under the DMRA.
- Adhere to the prohibition on promotion of medicines that are of substandard quality or misbranded or which the government has prohibited the sale or promotion of under the DCA.
- Not undertake doctor-centric advertising, by way of financial inducements, gifts, sponsorships or donations to doctors or their associates under the IMCR and the UCPMP.
- Abide by the prohibition on engaging pharmacists to advertise a specific medicine to patients under the PPR.

Direct-to-Consumer (DTC) advertising of pharmaceutical products is a sensitive area and companies generally hesitate to advertise medicines or medical devices.



Do Companies Need to Establish Specific Standard Operating Procedures (SOPs) to Govern Advertising Activities?

While there is no legally prescribed SOP to govern advertising by pharmaceutical companies, they must adhere to all the parameters under the various laws for making comparisons between products. All side effects of a medicine must be disclosed. Regarding audio-visual promotion, they must comply with the requisite disclosure requirements on the nature of the product, its active ingredients, recommended dosage, adverse reactions, method of administration and the date on which such information has been last updated. In case of advertorial promotions where journals or editorials are used for the promotion of a pharmaceutical product, it must be ensured that the advertisements do not resemble editorial content. Advertisements cannot use photographs of healthcare professionals as endorsers.

Companies must also define the role of medical representatives (MRs) in the promotion of their products. Samples must be dispensed. Gifts to anyone qualified to prescribe drugs is prohibited under the law. Giving benefits to doctors and pharmacists, like any travel or transportation/hospitality facilities, or monetary grants, etc., are prohibited.

For hiring of personnel for advertising and promotion of pharmaceutical products, the SPEA prescribes certain legal requirements that pharmaceutical companies must comply with in order to hire MRs. The provisions include:

- Ensure minimum level of leave to MRs.
- Provide the same treatment to MRs under Indian labor laws as “workmen”. This ensures MRs certain protection with regard to retrenchment, work timings, amendments to employment terms, termination entitlement and transfer of employment.
- Maintain stipulated records on MRs.

Does the Law Require Advertising to be Approved in Advance by a Regulatory or Industry Authority Before Use?

Legally, pharmaceutical companies do not have any obligation to get their advertising content approved in advance by a regulatory or industry authority. The DCA and DMRA work differently on this account from the UCPMP. The DCA and DMRA do not have any mandated powers to prevent further publication of any advertisement found to be flouting the rules. However, in the event of there being a conviction by a court under the DMRA, the court can direct the seizure of the relevant material relating to the advertisement.

Though not exactly a right to stop further publication of the offending ad, such an action effectively renders the publication of such an advertisement as violating the court's order. Flouting this order could lead to the offending party being prosecuted if there is a second instance and this carries both imprisonment and financial penalties. Such orders of a court are appealable in higher courts in the judiciary and up to the Supreme Court of India.

Under the DMRA and the DCA, the legal responsibility for non-compliance with the laws regarding publication of advertisements lies with the Board of Directors and the officers responsible for the management of the company. In such cases, judicial rulings have fixed the liability to executive directors or officers of the concerned company. All the directors are not made liable unless they can be held directly responsible for specific assent, knowledge or awareness of the violation non-compliance.

The UCPMP sets down specific requirements relating to advertising activities:

It holds that all claims made on the marketing of a product must be true and accurate and products more than 12 months old cannot be described as 'new'.

Violations of the UCPMP are adjudicated by the relevant Ethics Committee of the industry body (ECPMP) to which the relevant entity belongs. In case the entity is found to have violated the law, it has the power to stop further publication as well as seek a repeal of all published information and advertising material of the medicine from the market. It can further direct the offending party to issue a corrective statement. However, the concerned company can appeal for a review before a higher appellate authority within the body. In such a case, the findings of such appellate authority are final, but carry no legal sanction.

Conclusion

Advertising of pharmaceutical products needs to be strictly monitored and governed under stringent regulations as it affects the health and well-being of the consumers. India has adequate laws to govern the sector, however, there is a need to simplify and consolidate the various laws and bring in a separate law to regulate advertising. ▶

Source: Secondary research & media reports



Consumer Online Foundation



*An Aware Consumer is a
Protected Consumer*

“Let's
Not Fall
Victims
to Fraud
Be Aware”

JAGOGRAHAKJAGO.COM

Alcohol Advertising Promotes Drinking Among Teens

A study finally establishes that just as tobacco advertising promotes teen smoking, alcohol ads encourage drinking among teenagers.



IMAGE: PIXABAY

Alcohol advertising promotes drinking among teenagers.

FOR THOSE WHO would like to argue against the effects of advertising on consumption of tobacco and alcohol, especially by teens, here is a recent study that found that exposure to alcohol advertising changes teenagers' attitudes about alcohol and can cause them to start drinking.

The new analysis was led by NYU School of Global Public Health and NYU Grossman School of Medicine and was published in February this year. The study was published in a special supplement of the Journal of Studies on Alcohol and Drugs and was funded by the National Institute on Alcohol Abuse and Alcoholism. A framework was developed by the researchers to show causality between tobacco advertising and youth smoking and applies it to alcohol advertising.

There's no denying the impact of advertising on how people purchase and consume goods. It is also established that teenagers are at a particularly impressionable age and, therefore, exceptionally vulnerable to the influence of advertising. They tend to form brand loyalties at a young age, have little skepticism and hence are gullible to claims made in the ads. The high use of social media also exposes them to an increased onslaught of advertising- and influencer-marketing using teen icons. Advertisers of alcohol products are increasingly found on social media using surrogate advertising to push their products.

Teen alcohol use is a major public health problem around the globe. Lax rules mean teenagers can access alcoholic beverages, and many take to drinking with negative consequences – injuries, drunk driving and ensuing accidents, promiscuity, damage to the developing brain among others.

Though research has repeatedly shown that teen

exposure to advertising is linked with drinking attitudes and behavior, however, it had yet not been established if these associations are causal.

As regards tobacco, the scientific community has long contended that advertising by the tobacco industry, especially those marketing directly to the youth, is one of the direct causes of smoking among teenagers. Various studies including the National Cancer Institute, Master Settlement Agreement and Surgeon General's 2012 Report on Preventing Tobacco Use Among Youth and Young Adults, have agreed that the evidence is strong enough to suggest a contributory relationship exists between advertising and youth smoking. The establishment of a strong association has led governments across the world to come out with policies for regulation of tobacco advertising aimed at youth. This opened the door for researches to investigate if a similar causal relationship exists between advertising and alcohol consumption by youth.

In this study, it was found that, in every aspect under investigation, the influence of tobacco and alcohol advertising on teens was analogous. Use of mascots by both tobacco and alcohol companies in advertisements is a case in point. The research shows that mascots are easily recognized and trusted by children. Secondly, the use of movies, television and sporting events for advertising and product placement by both tobacco and alcohol companies is also another case in point. Studies have shown that exposure to smoking and drinking through such media increases the risk for youth initiation.

Neighborhood tobacco retailers and the small kiosks selling tobacco products (in India) expose children to more tobacco advertising while making it easier to buy cigarettes. These same shops also sell alcohol on the





IMAGE: PIXABAY

Tobacco advertising has proved to lead to smoking among youth.

sly. Alarming, despite regulations, tobacco and alcohol retailers are often found in the vicinity of schools and colleges.

In both tobacco and alcohol, exposure through advertising and teen knowledge, attitudes, initiation, and continued use of the products were found to be similar. As various studies have shown, advertising is a risk factor for both smoking and drinking and often lead to a dose-dependent relationship, even as more exposure to advertising increases consumption.

India Tightens the Screw

In India, the Cable Television Network (Regulation) Act, 1995, prevents alcohol brands from advertising their individual products directly. The ban on advertising of tobacco and alcohol products gave birth to the phenomenon called surrogate advertising. The brilliance of the concept and the wit displayed in these advertisements while appreciable; it cannot be denied that the associations of the brands with their alcohol or tobacco products remains fresh and indelible in the minds of the consumers. The humorous Imperial Blue's 'Men will be Men' Music CDs ad and the eminently hummable 'Ooolala la' jingle of Kingfisher 'calendars' may overtly be advertising or promoting something else. But for consumers the association of the mother companies of these products with liquor or tobacco products is what remains long after they forget what the ad was actually promoting.

The draft guidelines seem to be taking care of such allied goods or brand extension advertising. As per the guidelines, in judging whether or not a particular advertisement is an indirect advertisement for a product whose advertising is restricted or prohibited, due attention shall be paid whether the unrestricted good or service which is purportedly sought to be promoted through the advertisement, is produced and distributed in reasonable quantities, with regard to the scale of the advertising in question, the media used, and the markets targeted.

According to reports, India's surrogate advertising is to the tune of Rs 600-800 crore across mediums annually. Of this, 70 per cent has been on TV. Hence, the guidelines, when enforced, can make quite a dent on the liquor, pan masala, gutkha and tobacco industry's advertisements.

Sponsorships of major events by liquor and tobacco brands through their surrogates are supervised by ASCI. However, as the government is revisiting these guidelines, it is expected that stricter implementation may put an end to this form of extension too. Companies will have to make serious investments in surrogates like music CDs and prove that they are independently earning businesses under the brand. Though the rule existed, it is expected to become tougher.

As the guidelines transform the advertising agencies into stakeholders in the promotion of such surrogates, this should make them more careful about the accounts they accept. Celebrities featuring in proxy advertisements too will be held accountable and this may again ensure compliance with the regulations.

The days when corporate legal teams could alone handle any legal issues arising from flouting of norms will be over. The agency will have to ensure it does not get dragged into a legal mess. Agencies and celebrities may hence seek to ink separate indemnity agreements with the advertiser to ensure they are not held legally culpable in the event of an issue.

Liquor brands sensing which way the wind blows; have been moving their ad spends to the digital medium and OTT because of fewer restrictions. AdEx India data by TAM Media Research shows that the biggest ad volume drop for surrogate ads was on TV (67%) and Radio (77%) during August 2019-July 2020 over August 2018- July 2019. There was a relatively lesser drop of 27% in the same period witnessed in the digital media.

Alcohol advertising regulations have not been as stringent as cigarettes. Therefore, while cigarette advertising is finished, as they can only advertise on the pack itself and maybe on branded kiosks, but not in print, TV or other mass media, alcohol brands have had a free run with extensions and surrogates like music CDs, glasses, calendars, mineral water, etc.

This notification is primed to write the obituary of surrogate advertising. However, there is a distinct possibility that manufacturers with deep pockets may ramp up their substitute products to exploit loopholes in the law.

Conclusion

The guidelines on surrogate product advertising are open to interpretation and some experts fear that the loopholes can be exploited. Surrogate advertising, primarily by liquor brands with tag lines pointing to the alcohol product in small print is an example. 'Reasonable' quantities of the surrogate product as mentioned in the guidelines are subjective and can be the window for manipulation. On the positive side, brands moving to digital media should make them more responsible as the backlash for irresponsible advertising is instant and can damage the reputation of both the brand and the marketer. ■

Source: Secondary research & media reports



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CULTURAL CONTEXT IN ADVERTISING

Advertising is subliminal and its effects can be insidious. There must be open debates to generate awareness in consumers regarding the effects of advertising.

THE RECENT CONTROVERSIES

surrounding the advertisements of popular jewelry brand Tanishq has once again brought the focus on the importance of culture and milieu in advertising. Advertising needs to be informed about a society's customs and traditions and represent its artistic and intellectual achievements. To ignore the context and the behavioral codes passed down from generation to generation that govern a society, can often lead to a severe backlash. The penchant of advertising agencies to latch on to controversial issues ignoring the cultural context, especially in these days of social media, can be counterproductive.

If we look at the Tanishq advertisement from this lens, we can understand why it was not acceptable to certain sections of consumers. Taking a creative turn on a current controversy may grab eyeballs but it can also lead to needless litigation, controversies or boycott that can harm the brand.

Hence, paying attention to culture in advertising makes sense, especially for brands that work

internationally. In today's global markets, brands are presents everywhere. But culture varies from region to region, country to country. What may be acceptable in India, may be abhorrent in Pakistan. What may be tolerable in USA, may be rejected in China. Messages, symbols, rituals and even colors have different meanings and messages across cultures.

Seeing Things Differently

Assumptions and perceptions of people from different cultures also depend upon where they are from. Cultural connections create a distinct national psyche that underpins consumer attitudes. Various research

results have shown a direct correlation between emotions and culture in advertising.

People from different cultures also have differing perceptions of the world. There is a national 'identity' dimension to advertising which measures the strength of a nation's self-image. Certain societies have a fixed and clear identity, deep rooted in their centuries' old traditions and the people hold on it proudly. Such societies are not open to any suggestions that are contrary to their views. On the other hand, flexible societies are adaptive and evolving. These might even be traditional societies but are interested in moving with the times.

The interplay of culture and advertising is hugely complex and needs attention. Cultural sensitivities often determine how ads perform differently in different cultures and even in those that are perceived to be closely similar.

It is essential that advertisers examine the cultural resonance of their advertisements before launching them.





Advertising must be contextual to the cultural milieu it targets.

IMAGE: PIXABAY

How Advertising Impacts Culture

Advertising is a useful tool for businesses as it helps them communicate with consumers. It is especially vital for new entrants in any market. For consumers, advertising informs them about the choices they have.

However, for society, the big picture effects of advertising are not so good. Advertising is known to promote values that are opposed to human wellbeing, environmental sustainability and a fair society. Therefore, advertising has an adverse and detrimental influence on society and needs to be regulated.

Apparently, this is not how it appears to advertisers as for them it is simply a means to redistribute consumption and direct consumer spending from competing brands to their own. They opine that advertising promotes choice and reflects existing cultural values. But the truth is far from being so simple or noble.

Advertising, in fact, not only expands market share, it also

expands the size of the market. What this means is that advertising encourages the society to spend more which translates into less savings for the consumers. The mindless consumerism-driven society also leads people to borrow more to fulfill their desires. People even work harder to be able to consume greater quantities of material goods, influenced by advertising.

Advertising Subverts our Values

Advertising has a direct impact on our values. True that advertising is a reflection of the society, but at the same time it also normalizes new values or behaviors. The daily onslaught of advertising on consumers starts wielding considerable power over what is considered normal in society.

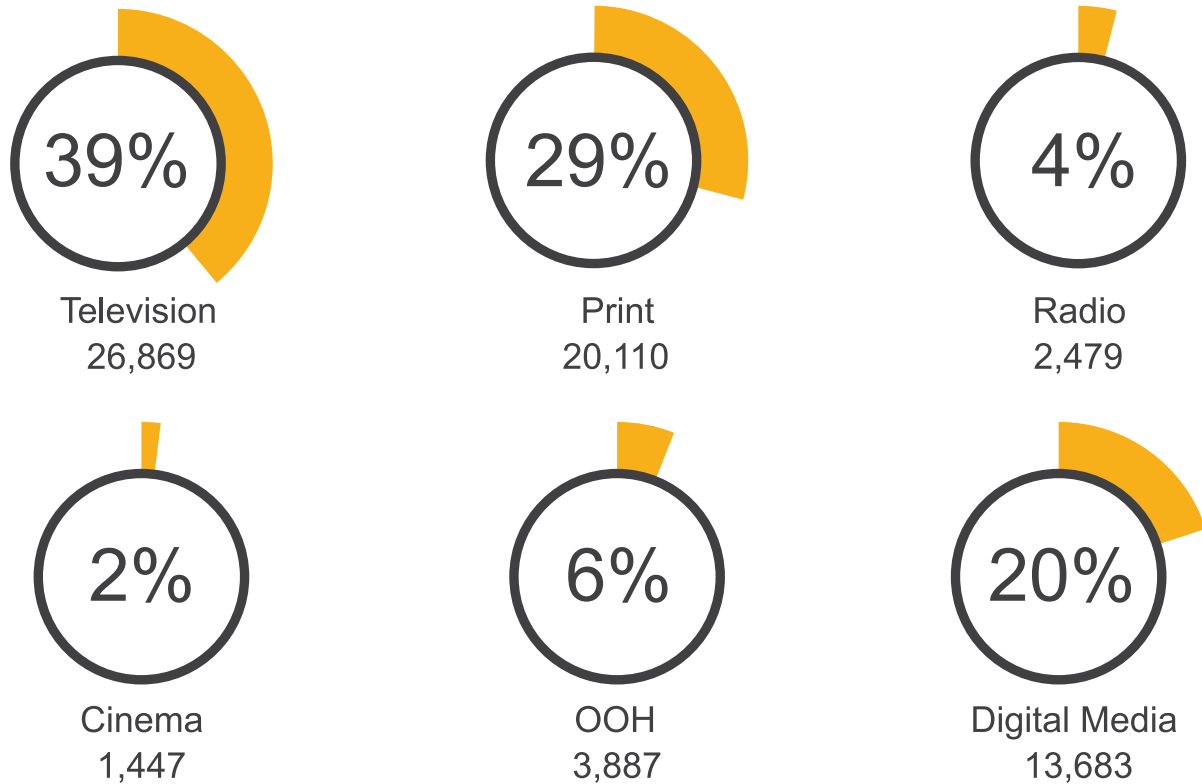
For example, fairness cream is now becoming the new normal for men. Some years ago, the idea of a man using a fairness cream openly would have surely labeled him as a sissy. But, with leading actor



Shahrukh Khan endorsing the fairness cream, it soon became accepted usage for men.

Same is the case with cosmetics and moisturizers for men. The concept is no longer laughable as more and more men are adopting such daily care routines and using cosmetics too. The credit goes to the sustained advertising campaigns of various brands that made it

AD SPENDS ON DIFFERENT MEDIA (INR CR)



acceptable for society that there is nothing unusual at all about men using creams and moisturizers.

This is just to demonstrate the power and influence wielded by advertising over society. Moisturizers and fairness creams may by themselves not be harmful products, but the values that they promote becomes a problem.

Advertising promotes 'extrinsic' values rather than 'intrinsic' values. It is fairness, beautiful skin, admiration of the opposite sex that is being encouraged as values and is troublesome. Advertisements further support external factors for validation – the appreciation and opinion of others matters more than intrinsic values of self that are rewarding in themselves – for example, sense of family belonging, rewarding work or self-development.

This is a cause for concern as the more value we place on extrinsic

values the higher are the levels of prejudice, lower concern for the environment and disregard for human rights. We are building intolerant societies under the influence of advertising. Additionally, we are also harming individual well-being by attaching greater importance to extrinsic values.

Many experts point out that it is even wrong to say that advertising promotes choice. Advertisements subtly manipulate consumers and in the process stifle choice. Advertising is subliminal, fed to consumers in small doses, and is insidious. It influences the mind to form positive associations while suppressing the conscious thought process. For example, our mind associates pizza with fun times, and we automatically reach for a cola as a thirst quencher. If the decision were left to our rational mind, not many of us would want to eat junk food or consume

empty calories through the can of Coca Cola. Our brain is so addled by the ads that it cannot take an objective decision.

An active choice is bad for the brand hence advertisements promote instantaneous and intuitive brand judgments involving little conscious effort on the part of the consumers.

Conclusion

Advertising circumvents our thought processes and encourages us to spend recklessly, promotes debt, selfishness and a cavalier attitude to the environment. Consumers need to be more aware of what advertising does to them. There must also be more public debates on the ethics of advertising to make it more responsible. ▶

Source: Secondary research & mediareports



Manisha Kapoor
SECRETARY GENERAL
The Advertising Standards Council of India

Education for us, is therefore not merely another product or service we consume, but it is central to our lives and our aspirations for the future, and indeed an integral part of our identities.

EDUCATION IN INDIA is the key to the success of generations of Indians who have leapfrogged their destiny in ways the previous generations could not have imagined. Today's middle class comprises people who have seen significant gains made in their incomes and social standing on the back on time and money invested in education.

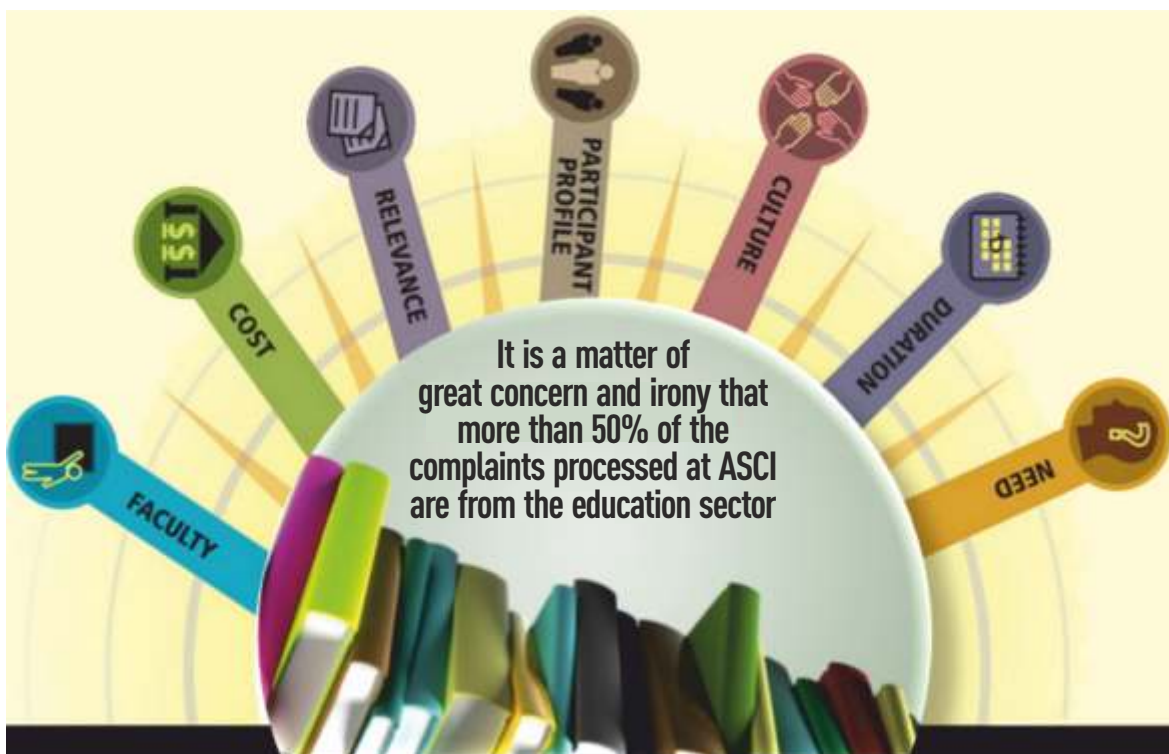
In India, we have a special relationship with education. As per mythology, Goddess Saraswati, the goddess of knowledge and wisdom was considered superior to others and the most difficult to appease. The Indian caste system too put the Brahmins, the educated, on top of the social hierarchy thus signaling that education was more important than wealth. Education for us, is therefore not merely another product or service we consume, but it is central to our lives and our aspirations for the future, and indeed an integral part of our identities. It is not unusual to hear of extreme sacrifices families make to educate their children. Even among the better off, education remains a high concern. It is one category that is omnipresent across the length and breadth of the country, and from the rich to the poor.

All of these factors make consumers vulnerable. And create an attractive market.

The trust consumers have in education also transcends into trusting advertisements of educational institutes and programs. A recent "Trust in Advertising" study, jointly commissioned by Advertising Standards Council of India (ASCI) and the Indian Society of Advertisers showed that a whopping 82% of consumers trusted education sector ads, amongst the highest of any sector.

From a time that schools and colleges participated in the ofveneration of education, we have easily shifted to the idea of education as a flourishing business. Whether it is coaching classes in every nook and corner of the country promising that you can get a chance to become an IAS officer or crack the JEE, or the more recent trend of promising to make geniuses of your kids before they have learnt to walk, advertisers have been promising the moon. "Guaranteed placements", "No. 1 institute", "endorsed by world technology leaders" "Most awarded" are the kind of shrill promises made by several advertisers. Unfortunately for the unassuming and trusting consumer, most of these are fake and misleading advertisements. Vulnerable consumers end up spending their lives' earnings, enrolling their kids, some as young as 1 year, into these institutes in the hope of a better future. We even came across an advertisement meant for unborn children! Leading parents and students to a frenzy, feeding on their insecurities is really an unfortunate approach adopted by several advertisers in this segment.

It is a matter of great concern and irony that more than 50% of the complaints processed at ASCI are from the education sector, and a majority of these complaints are found in contravention of the ASCI guidelines. With the education industry, particularly the edtech segment poised to grow significantly, we hope that advertisers choose the path of responsible advertising and not betray the inherent trust consumers have in education. ASCI has, and will continue to step up its monitoring of this sector, so that consumers can be confident about the choices they make for their future. ▶





The Advertising Standards Council Of India

So you can trust advertising

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Advertising Standards Council of India

THE LAST MILE

Importance Of Government Advertisements

Government advertisements have an important role to play in citizen communication and must ensure that they justify the taxpayers' money being spent on them. Print media advertisement, as the most important element in government advertisements, must follow the stipulated guidelines if they are to create the desired impact.

Print is a powerful mass medium and government print advertisements must be regulated.

IMAGE: PIXABAY

IN JUNE 2018, the Ministry of Information and Broadcasting had revealed its plans to carry out an independent study to understand and measure the impact of government advertisements on people. The study report was to help the government understand which medium was best suited for publicizing a particular state scheme for better impact. The overarching aim of the exercise was to draw up a strategy that would ensure judicious use of money for publicity works of the government.

The initiative was launched ahead of the crucial 2019 Lok Sabha elections and it was felt that the exercise was to help it reach out to the people and highlight its work. While there is no record in the public domain of the result of this exercise; there does exist an earlier six-year strategic plan (2011-17), which was to act as a roadmap for the government to attain certain key objectives.

The Ministry of Information and Broadcasting (MIB) is responsible for disseminating information on government policies, schemes and programmes through multiple media of mass communication including radio, television, press, social media, internet websites, printed literature, outdoor media and traditional modes of communication such as dance, drama, folk recitals, etc.

The Directorate of Advertising and Visual Publicity (DAVP) is the nodal agency of the central government and is responsible for advertising on behalf of various ministries, departments, public sector firms and autonomous organizations funded by the government. Government's advertisements are carried in various media platforms, including print and visual media. In 2017, the DAVP was merged with the Directorate of Field Publicity and Song and Drama Division and a new entity was formed called the Bureau of Outreach Communication (BOC). The purpose was to bring better synergy for efficient publicity works of the government. It aims at providing 360-degree communication solutions to the Ministries/Departments/ Public Sector Undertakings (PSUs)/autonomous bodies.

Importance of Government Advertising

Government advertising or information campaigns are important means of reaching out to the public to inform them about new initiatives, policies or programs. Advertisements on mass media are particularly helpful in educating the masses or advising them on how a scheme or law might benefit or affect them. It also informs the citizens about what they must do to comply with the laws or new requirements.

However, government advertising often degenerates into political advertising, blurring the distinction between legitimate government advertising for public policy purposes and political advertising for party or individual advantage. Expenditure on self-promotional advertising by the government using taxpayer funds for political advantage rather than to fulfill its obligation to meet the genuine information needs of citizens is unjustifiable. Unfortunately, most governments indulge in such advertising.

Despite the concerns being expressed, incumbent governments have for long misused taxpayer funds in this way. This has called for reforms and guidelines on government advertising. To address these concerns, the government comes up with suitable guidelines from time to time. It is another matter altogether, that most fail in following their own guidelines in letter and spirit.

Scale of Government Advertising

Government advertising has been shrinking and the Indian government spent 72.56% less money on advertisement campaigns in print, TV and digital media to publicize its programmes and policies in 2019-20 as compared to 2017-18. The government spent a total of Rs 1,196.89 crore in print, TV and digital media in the last three financial years between 2017-18 and 2019-20. This does not include other modes of publicity like outdoor, pamphlets, etc. As per the statistics, the expenditure fell from Rs 585.31 crore in 2017-18 to Rs 451.01 crore and Rs 160.57 crore in the next two fiscals.

This information was shared by the Information and Broadcasting Minister, Prakash Javadekar in the Rajya Sabha in September.

The statistics further show that expenditure on advertisements in print media was Rs 462.22 crore in 2017-18 but decreased to Rs. 301.03 crore and Rs 129.18 crore in the next two fiscals – a 72.05% decrease between 2017-18 and 2019-20. TV saw an increase in advertisement revenue from the government in 2018-19 – from Rs. 109.87 crore in 2017-18 to Rs 123.11 crore. In 2019-20, however, there was a drastic reduction to Rs 25.68 crore. Digital media (internet, SMS) also saw a similar rise and steep fall. In 2017-18, the BOC spent Rs 13.22 crore, which rose to Rs 26.87 crore the next year while 2019-20 witnessed a sharp slide to Rs 5.71 crore.

Media that depends on advertising revenue to sustain itself, is dependent on government advertising to a large extent. The corona virus pandemic saw large-scale restructuring and layoffs in the media and the sector sought government support asking it to increase its advertisement budget and clear pending dues.

Government Policy on Print Advertising

Print media, as the statistics show, still takes up the giant share of advertising expenditure. The primary purpose of the government campaigns through print media is to secure the widest possible coverage of the intended content or message through newspapers and periodicals of current affairs as well as science, art, literature, sports, films, cultural affairs, etc.

In order to enable BOC to carry out its activities, there have to be clear guidelines detailing the procedure for empanelment of newspapers and periodicals, release of advertisements, advertisement rates, payment of bills and penalties.

Let us see how advertising is regulated in print by the government.

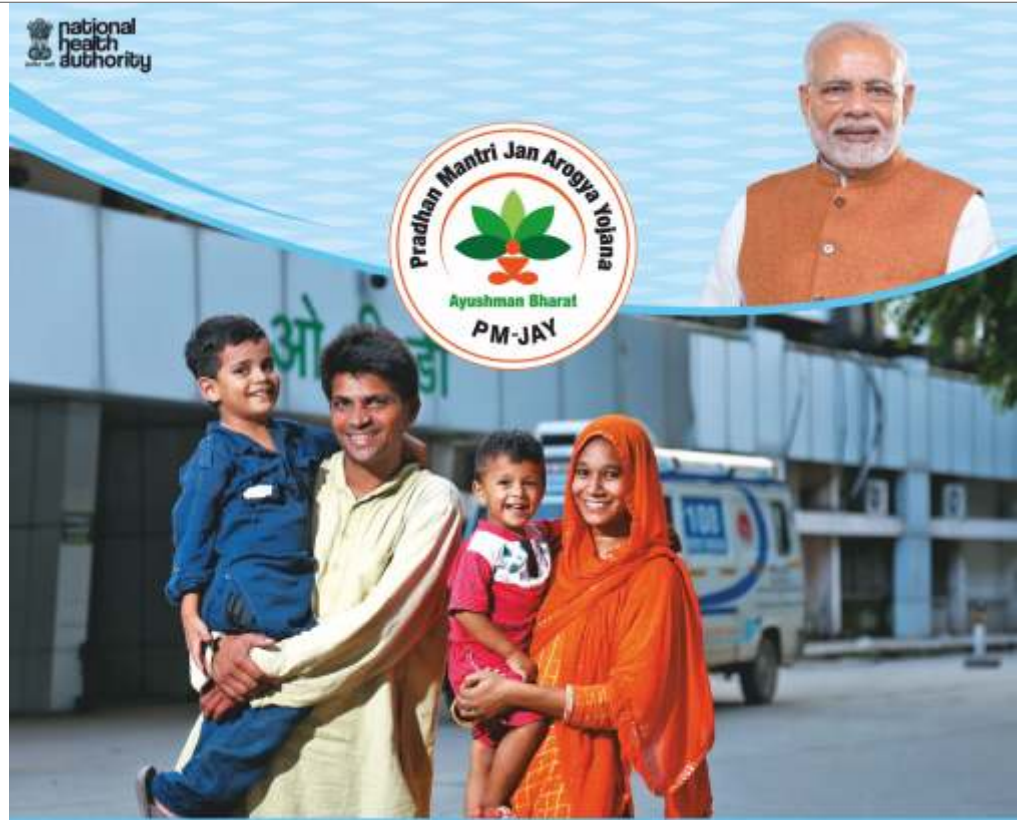
BOC maintains a list of approved publications for release of advertisements by empaneling acceptable publications. Item panels only such publications which are found suitable for issue of advertisements of the Government of India. Moreover, the BOC endeavors to empanel publications having readership from different sections of the society in different parts of the country.

Small publications are defined as those with circulation up to 25,000 copies per publishing day. Medium publications have a circulation between 25,001 and 75,000 copies per publishing day and big publications are those with circulation above 75,000 copies per publishing day. Government advertisements are not intended to be of financial assistance to the publications.

In adherence of the Government of India (Allocation of Business Rules), 1961, Para VI (23), BOC is empowered for the production and release of advertisements on behalf of the Government of India and reiterated by the Cabinet Secretariat from time to time. All Ministries/ Departments of the Government of India, public sector undertakings, autonomous bodies and societies, central universities, educational institutions of Government of India are required to route their display advertisements through BOC. However, they are permitted to issue classified advertisements (e.g., tender notices, auction notices, recruitment advertisements, etc.) directly to the BOC empanelled publications at BOC rates and may publish their recruitment advertisements directly in the Employment News at BOC rates.

Empaneled publications are required to maintain a reasonable standard specifically on the following parameters:

- The print matter and photographs should be legible, neat, clear and without smudges, overwriting and tampering.
- There should be no repetition of news items, editorials and articles from other issues of the same publication.
- There should be no reproduction of news items,



Government advertising or information campaigns are important means of reaching out to the public to inform them about new initiatives, policies or programs

editorials and articles from other publications.

- The source of news/articles should be mentioned.
- The masthead on its front page should carry the title of the newspaper, place, date and day of publication: RNI Registration Number (in masthead or Imprint Line), volume and issue number, number of pages and price of publications.
- The newspaper should carry imprint line as required under PRB Act.
- Inner pages must carry page number, place of publication (in multi edition publications), title of the paper and date of publication.
- All the publications must carry an editorial.

Conclusion

Government advertisements have a specific duty to disseminate relevant information and generate awareness among citizens. Hence it is important that they follow the mandated guidelines and ensure that they do not become a proxy for partisan political promotions. Since the print medium has a huge role to play in government advertisement, it must be stringently regulated. ▶

Source: Secondary research & media reports



Govt Launches



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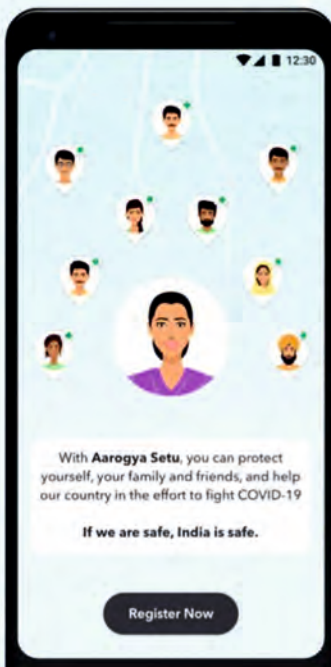
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What Consumers Have To Say About The Draft Guidelines...

Consumers find the guidelines comprehensive and aimed at protecting the buyers' interests. A lot will depend on the implementation though.



Consumers find guidelines empowering.

IMAGE: PIXABAY

A DRAFT OF the Central Consumer Protection Authority (Prevention of Misleading Advertisements and Necessary Due Diligence for Endorsement of Advertisements) Guidelines, 2020, was put up in the public domain inviting views/comments/suggestions on the draft guidelines within 14 days (till 18th September, 2020). Let us find out what the readers of The Aware Consumer have to say about the various provisions under the draft:

Scope & Applicability — (1) These guidelines cover all advertising/ marketing communications regardless of form, format or medium. (2) These guidelines are applicable to the manufacturer/service provider whose products/ services are the subject of the advertising/marketing communications, as well as to the advertising agency and endorser (wherever applicable) of the product/service.

The guidelines are comprehensive in scope as they extend the scope of its applicability to advertising and marketing across formats and also manufacturer, service provider, agency and endorser, including social media influencers.

– **Kiran Kumar, Uttam Nagar, Delhi**

Conditions for a valid advertisement – In order to be considered valid, an advertisement shall- (1) contain truthful and honest representations; (2) not mislead consumers by exaggerating the capability, performance or service of the product; (3) not present rights given to consumers by virtue of law as a distinctive feature of the advertiser's offer; (4) not suggest that the claims made in it are universally accepted if there is a significant division of informed or scientific opinion pertaining to such claims; (5) not mislead about the nature or extent of the risk to consumers' personal security, or that of their families if they fail to purchase the advertised product or service; (6) notwithstanding the above, while carrying out mass manufacture and distribution of goods and services, if an occasional, unintentional lapse in the fulfillment of an advertised promise or claim occurs, then such unintentional lapse may not invalidate the advertisement

in terms of these guidelines: Provided that- (a) the claim or promise is capable of fulfillment by a typical specimen of the product advertised; (b) the proportion of product failures is within generally acceptable limits; (c) the advertiser has taken prompt action to make good the deficiency to the consumer. (7) Advertisements should not be offensive to generally accepted standards of public decency in India and should not contain material which is likely to cause grave and widespread offence to the public.

Under this guideline, an advertisement will have to satisfy stringent conditions to be considered effective. It is wide in its scope and leaves little room for manipulation. It covers all possible ways that advertisements try to mislead consumers.

– **Pankhuri Yadav, Patparganj, New Delhi**

53% of the Internet users watch videos on YouTube on a monthly basis, the numbers being as high as **72%** for 18-24.

30% of the audience sees more than **7** videos through Whatsapp in a week.



Non-imitation of advertisements – (1) An advertisement shall not be so similar in general layout, copy, slogans, visual presentation, music or sound effects to other advertisements or promotions so as to be likely to mislead or confuse the consumer. (2) An advertisement shall not be similar to previous advertisements published by any other advertiser in general layout, copy, slogans, visual presentation, music or sound effect so as to mislead or confuse the consumer. (3) Advertisements should not be misleading to the consumers about who the manufacturer of the product is.

Comparative advertising – (1) In order for a comparative advertisement to be considered permissible, it – (a) shall be factual, accurate and capable of substantiation; (b) shall not present a good or service as an imitation or replica of a good or service with a protected trademark or trade name; and (2) Advertisements containing comparisons with other manufacturers, suppliers, producers or with other products, including where a competitor is named, shall be permitted in the interest of promoting competition, where – (a) the features of the competitor's product being compared to the features of the advertiser's products are specified clearly within the advertisement; (b) the subject matter of the comparison is not of such nature so as to confer an artificial or unjustifiable advantage upon the advertiser; (c) the nature of comparisons is such that they are factual, accurate and capable of being substantiated.

Copycat advertising deliberately misleads consumers into buying a fake product by confusing the buyer. These provisions together will not only protect consumers but also brands whose advertisements are copied to mislead consumers into buying an inferior or rival product. It is a good step that will ensure fair competition and responsible advertising.

– **Krishna Kumar**. Noida

Bait advertising— (1) an advertisement shall not seek to entice consumers to purchase a good or service without a reasonable prospect of selling the advertised good or service at the price offered. (2) an advertiser shall ensure that there is adequate supply of goods or services to meet foreseeable demand generated by such advertisement. (3) an advertisement shall state any reasonable grounds that the advertiser has for believing they might not be able to supply the advertised good or service within a reasonable period and in reasonable quantities, in particular: (a) if the estimated demand exceeds supply, advertisements shall make clear that the stock of the good or service is limited; (b) if the purpose of the advertisement is to assess potential demand, it shall be clearly stated in the advertisement; and (c) an advertisement shall not mislead consumers by omitting restrictions on the availability of the good or service, for example, geographic restrictions or age limits. (4) an advertisement shall not mislead consumers about market conditions or the possibility of finding the good or service elsewhere to induce consumers to purchase the good or service at conditions less favourable than normal market conditions.

In the era of e-commerce, festival sales, and Black Friday sales, and other such marketing gimmicks to hook the consumers, this comes as a timely step to streamline such advertising and promotion. Sometimes, bait advertising is used to create false demand to trap consumers into buying other similar products that may have not moved off the shelf. This provision in the guidelines should take care of such unscrupulous practices. However, a lot will depend upon the implementation.

– **Kanchana Sengupta**, CR Park, New Delhi

Source: Secondary research & media reports

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NABH AYUSH ENTRY LEVEL CERTIFICATION PROGRAM

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NABH

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It is playing a pivotal role at the National level in propagation, adoption and adherence to healthcare quality standards in AYUSH healthcare delivery systems.

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In the recent years, there has been a paradigm shift from allopathy system to traditional healthcare. To support this trend, health insurers have started offering AYUSH treatment covers as part of their health insurance policies. NABH Ayush Entry Level Certification Standards provide an objective system of empanelment by insurance and other third parties. These standards also address the need for quality control and quality monitoring in AYUSH healthcare as required by the Pradhan Mantri Jan Arogya Yojana (PM-JAY) under the Ayushman Bharat Scheme.

NABH AYUSH Entry Level Certification standards are easily downloadable from NABH website.



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Irvine Lifesciences has developed a unique facemask N95 complying to specified standards to combat Covid-19 pandemic situation. It has emerged with the aim of providing high filtration efficiency rate compared to any other mask.

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