

Misleading Advertisement and Law in India

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Abstract

Misleading advertisements have become a pervasive problem in India, posing a threat to consumer rights and public health. This paper examines the legal framework governing misleading advertisements in India, analyzing the relevant statutes, regulations, and case law. The study evaluates the effectiveness of the current legal framework in addressing the issue of misleading advertisements and identifies the gaps and challenges in its implementation. The paper also examines the role of various stakeholders, including the government, consumer organizations, and advertising self-regulatory bodies, in addressing the problem. The study concludes that the legal framework for regulating misleading advertisements in India is fragmented, inconsistent, and inadequate, and that there is a need for a more comprehensive and integrated approach. The paper recommends the adoption of a robust and enforceable legal regime that includes provisions for effective remedies, penalties, and sanctions against advertisers who violate the law. The study also emphasizes the need for greater awareness and education among consumers and stakeholders on the issue of misleading advertisements and their legal rights and remedies.

Advertising is crucial in today's digitally connected world for building a strong brand for a company or its goods. Advertising is typically used to educate, convince, and remind people about the goods and services. Advertising is intended to improve consumers' reactions to the goods or services a business offers, potentially increasing revenue. Therefore, the goal of advertising is to raise awareness of the advertised product and to give consumers information they may use to make an informed decision about whether or not to buy it. Advertisements are usually made through various forms like, digital and printed with the help of Television, radio, newspaper, internet etc. According to Section 2 (1) of Consumer Protection Act (CPA) 2019 "advertisement" means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents. Consumers generally rely on the details offered by businesses in their product advertisements when making purchasing decisions. As e-commerce companies like Amazon, Flipkart, Myntra, Snapdeal, Shopclues, Nykaa and e-bay gain popularity, consumers' lifestyles and purchasing patterns have undergone tremendous shift. Everyone currently likes internet shopping due to a lack of time and low prices. The flow of online purchases has been significantly improved by the use of social media networking and smart gadgets. When a person decides to buy a product, they mostly depend on the information given by companies in their product advertisements. To promote their goods and draw customers, these online marketplaces regressively use advertising and promotional marketing techniques. Short-term sale promotions are used by e-commerce websites in India to draw customers, and they largely rely on both online and offline advertising. Advertising is a crucial strategy used by e-commerce companies to showcase their goods, promotions, and special pricing offered to customers, some of which are even

lower than the competitive companies and even from the offline purchase of the products. This gives them an advantage over other e-commerce websites as well as the suppliers and retailers. Yet, this competition for supremacy has increased the use of deceptive marketing techniques and promises about product quality, quantity, services, prices, and discounts. This deceptive¹ and false² advertising is not only unethical; they distort competition and, of course, consumer choice. A misleading advertisement is one that deceives, manipulates or is likely to deceive or manipulate the consumer. The Central Consumer Protection Authority (CCPA) on 9th June 2022 issued the “Guidelines for Prevention of Misleading Advertisements and Endorsement for Misleading Advertisement 2022” with immediate effect³.

What amounts to Misleading Advertisement?

There is no denying that advertisements have an impact on customer decision so it is for this that advertisements must be fair and accurate. The primary purpose of advertisements is to market a good or service, but sometimes they exaggerate the benefits of the advertised item. Advertising in and of itself is not an issue, but rather a vital tool for expanding business and reaching a wider consumer base. But it works against customers' interests when advertising makes spurious claims to entice buyers. Now manufactures or service providers are spending large amount of budget on marketing and there is a boom in advertisement market. Manufacturers may attempt to market using fake information in order to assert that their product is superior to the competition. And in this attempt when an advertisement misleads viewers, distorts reality, and modifies consumer behavior, it is said to be deceptive. A claim about a good or service that is materially untrue or deceptive and intended to influence the consumer to purchase it is considered misleading advertising⁴. Deceptive advertising, which can mislead consumers and harm competitors, is an ethical issue in today's corporate world. The negative effects of today's advertising include the promotion of materialism, conspicuous consumption, class consciousness, and other values that are not generally embraced. Deceptive advertising is prohibited in its most egregious forms, but it can also happen in covert ways that are challenging to prove as outright deceit. Section 2 (g) Insurance Regulatory and Development Authority of India (Insurance Advertisements and Disclosure) Regulations, 2021⁵ “Deceptive or misleading advertisement⁶” means any advertisement-

¹An advertisement is said to be deceptive if it misleads people, changes reality and influences consumer buying behavior.

²“False” refers to the misrepresentation of the facts; false information can result in an unacceptable number of people using the information to make wrong decisions, but consumers are vulnerable to advertising when presented with a unique environment.

³These guidelines basically focus on bait, free claim advertisements, and advertisements targeting children. The guidelines say that if the advertisement doesn't meet the standard/characteristics of the product or services it will be considered misleading. The characteristics mentioned in the guidelines for advertisement are not to do misleading advertisements but to have honest and transparent representations, must ensure that the claim must fulfil its promise, not to be used for publicity, and suggest claims which are universally accepted. Prior to the Guidelines, advertisements and endorsements were governed under the CPA, and the below sector-specific legislations:

The Drugs and Cosmetics Act, 1940 – prescribes penalty for advertising of test results or analysis made by Central Drugs Laboratory or Government Analyst;

The Copyright Act, 1957 – protects certain advertised literary or dramatic works as non-infringing acts, and provides remedies against groundless threat of legal proceedings made through advertisements;

The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 – controls and prohibits the misleading advertisement relating to drugs;

The Programme and Advertising Codes under the Cable Television Networks (Regulation) Act, 1995 – governs advertisements on cable services in India;

The Trade Marks Act, 1999 – prohibits infringements of registered trademarks by advertisements which take unfair advantage of or are contrary to honest practices in industrial or commercial matters, or are detrimental to the distinctive character and repute of the registered trademark;

The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 – prevents advertisements of cigarettes and other tobacco products in India; and

The Food Safety and Standards Act, 2006 and corresponding rules and regulations – governs advertising of food articles in India;

⁴George Cheriyan, et. al., Study on the Status of Law Enforcement for Misleading Advertisements in India and its Impact on Consumers, Consumer Unity & Trust Society, p 7.

⁵F. No. IRDAI / Reg / 2 / 174 / 2021

- i. fails to clearly identify the product as insurance in any insurance advertisement;
- ii. makes claims beyond the ability of the policy to deliver or beyond the reasonable expectation of performance;
- iii. describes benefits that do not match the policy provisions;
- iv. uses words or phrases in a way which hides or underplays the risks inherent in the policy;
- v. omits to disclose or discloses insufficiently, important exclusions, limitations and conditions of the policy;
- vi. gives information in a misleading way;
- vii. illustrates future benefits on assumptions which are not realistic nor realisable in the light of the insurer's current performance; or deviates from the stipulation by the authority through regulatory provisions.
- viii. where the benefits are not guaranteed, does not explicitly say so as prominently as the benefits are stated or says so in a manner or form that it could remain unnoticed;
- ix. implies a group or other relationship like sponsorship, affiliation or approval, that does not exist;
- x. makes unfair or incomplete comparisons with products which are not comparable or disparages competitors.
- xi. uses design, content or format which disguise, obscure or diminish the significance of any statement, warning or other matter which an advertisement should contain. However, the following qualify as valid and non-misleading advertisements⁷:
- xii. use or denigrate names, logos, brand names, distinguishing marks, symbols etc., which may be similar to those already used by others in the market that may lead to confusion in the market place.
- xiii. use terms or phrases that convey a fabricated sense of security.
- xiv. where features or benefits prominently displayed are the features or benefits that are applicable under extreme or exceptional scenarios.

However, under these conditions of advertisement are not said to be unfair or misleading

- Contain truthful and honest representation;
- Non-misleading consumers through exaggeration of the product or service's accuracy, scientific validity, practical usefulness, capability or performance;
- Do not present consumers' legal rights as the offer's distinctive feature;
- In case there are specific informed or scientific opinion in the advertisement claims, it should not suggest the advertisement to contain universally-accepted claims;
- In case of failure to purchase the advertised goods or services, it must not mislead the consumers or their families of the nature or extent of risk to their personal security;
- Non-misleading consumers about the unsubstantiated claims, which are merely based on publications;

The following materials shall not be considered to be an advertisement provided they are not used to induce the purchase, increase, modification, or retention of a policy of insurance: —

⁶Sec. 2(28) of Consumer Protection Act, 2019 defines misleading advertisement as- "*an advertisement, which — (i) falsely describes such product or service; or (ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or (iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or (iv) deliberately conceals important information*".

⁷Clause 4, Guidelines for Prevention of Misleading Advertisements and Endorsement for Misleading Advertisement 2022

1. materials used by an insurance company or intermediary or insurance intermediary within its own organization and not meant for distribution to the public;
2. communications with policyholders other than materials urging them to purchase, increase, modify, surrender or retain a policy;
3. materials used solely for the training, recruitment including employment notices, and education of agents, intermediaries, counselors, solicitors and personnel of insurers or intermediaries or insurance intermediaries, provided they are not used to induce the public to purchase, increase, modify, or retain a policy of insurance
4. any general announcement sent by a group policyholder to members of the eligible group that a policy has been written or arranged.
5. Tender notices to the member of public provided they are not used to induce the public to purchase, increase, modify, or retain a policy of insurance.
6. communications with policyholders in the form of premium notices, lapse notices, revival quotes etc.⁸

What are the Advertisement Laws in India?

With regard to problems resulting from this industry, the need for the adoption of advertising rules became apparent. The advertising sector has experienced rapid growth in recent years, and as a result, its focus has diversified. Evidently, there were more problems that needed to be resolved in order to assure justice in the marketplace, the public's protection from dangerous products, and the suppression of the advantages enjoyed by unethical advertisers. When legal action is brought against a company, they took protection of Article 19 (1) (a) of the Indian Constitution. Article 19(1)(a) of the Constitution guarantees the right to freedom of speech and expression to all citizens of India, and the essential corollary to the same is the right to be informed and access to information. However, it was in *Indian Express Newspaper v. Union of India*⁹ that the Supreme Court held that commercial speech is protected under the ambit of free speech and expression under Article 19. The Supreme Court noted that "We are of the view that all commercial advertisements cannot be denied the protection of Article 19(1)(a) of the Constitution mere because they are commercial advertisements." The Supreme Court noted the right of the consumer as a recipient of commercial speech in *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd.*¹⁰ by stating, "An advertisement giving information regarding a life-saving drug may be of much more importance to the general public than to the advertiser who may be having purely a trade consideration." The rights of people to hear, read, and receive the aforementioned speech are likewise protected by Article 19(1)(a), which ensures freedom of speech and expression. Furthermore, the Supreme Court ruled that deceptive and misleading advertising would not be covered by Article 19's protections.

There is currently no centralised agency or standard body of law in India that governs the advertising sector. The Advertising Standards Council of India (ASCI) is a non-statutory organisation that oversees and regulates the entire Indian advertising industry. ASCI was founded in 1985 and is recognised by section 25 of the Company Act as a non-profit organisation. In order to protect consumer interests, ASCI is dedicated to the cause of self-regulation in advertising. Advertising Standards Council International (ASCI) works to guarantee that commercials adhere to its Code for Self-Regulation, which mandates that commercials be ethical, respectable, accurate, and neither dangerous or destructive while upholding fair competition. ASCI investigate complaints from all media, including print,

⁸Explanation to Section 2 (d) IRDA (Insurance Advertisements and Disclosure) Regulations, 2021.

⁹ *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, 1985) 1 SCC 641

¹⁰ *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd.*, (1995) 5 SCC 139.

radio, television, billboards, SMS, emails, websites, product packaging, brochures, and point-of-sale materials, among others. The Department of Consumer Affairs¹¹ (DoCA), the Food Safety and Standards Authority of India (FSSAI)¹², the Ministry of AYUSH¹³, and the Ministry of Information and Broadcasting¹⁴ have all commended ASCI for its role in co-regulating and reducing deceptive and objectionable advertisements in their respective sectors. The self-regulatory mechanism was also validated and acknowledged by the Supreme Court of India in its ruling in January 2017 as an effective preventative measure to statutory laws in the area of advertising content regulation for TV and Radio in India. ASCI is a member of the International Council on Ad Self-Regulation's Executive Committee. (ICAS). Nearly 94% of the complaints against advertisements that were received across multiple media platforms required modifications, according to the ASCI (Advertising Standards Council of India) Complaint Analysis Report of 2021–22¹⁵. Although there isn't a single piece of legislation that governs every area of the advertising industry, there are a number of laws that address certain aspects separately.

Section 10 of Consumer Protection Act 2019 the Central Government shall, by notification, establish with effect from such date as it may specify in that notification, a Central Consumer Protection Authority (CCPA) to be known as the Central Authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class. Section 16 states that the District Collector (by whatever name called) may, on a complaint or on a reference made to him by the Central Authority or the Commissioner of a regional office, inquire into or investigate complaints¹⁶ regarding violation of rights of consumers as a class, on matters relating to violations of consumer rights, unfair trade practices and false or misleading advertisements, within his jurisdiction and submit his report to the Central Authority or to the Commissioner of a regional office, as the case may be. According to Section 18 (1) the Central Authority shall—

- (a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;
- (b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;

¹¹The Department of Consumer Affairs has launched a portal-Grievance Against Misleading Advertisements (GAMA), to enable consumers to register their grievances against misleading advertisements. 3302 complaints have been received in 2017, 4025 complaints in 2018 and 4416 complaints in 2019. The Department of Consumer Affairs (DoCA) has appointed the Advertising Standards Council of India (ASCI) as its 'Executive Arm'. The objective is to curb misleading advertisements and unfair trade practices in ASCI ties up with Dept of Consumer Affairs to stop misleading ads by Special Correspondent, The Hindu, November 13, 2014, Mumbai

¹²Ad regulator the Advertising Standards Council of India (ASCI) on Monday announced that it has signed an agreement with the Food Safety and Standards Authority of India (FSSAI) to safeguard consumers against misleading claims in food and beverage (F&B) advertisements by Ratna Bhushan in ASCI, FSSAI collaborate to curb misleading claims in foods & beverages ads, Economic Times, Jul 05, 2021

¹³Ministry of AYUSH and Advertising Standards Council of India sign MoU to co-regulate misleading advertisements in the AYUSH sector- addressing the cases of misleading advertisements with respect to Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy drugs, treatments and related services, ASCI will comprehensively monitor these advertisements across print and electronic media. Press Information Bureau, 20-January-2017.

¹⁴The Ministry of Information and Broadcasting has issued an advisory, advising the print and electronic media to refrain from publishing advertisements of online betting platforms, and online and social media, including online advertisement intermediaries and publishers, not to display such advertisements in India or target such advertisements towards Indian audience. The Ministry has also issued an advisory to all private satellite television channels on 'Advertisements on Online Games, Fantasy Sports, etc.', advising all broadcasters that the guidelines issued by the Advertising Standards Council of India (ASCI) be complied with and that the advertisements broadcast on television adhere to the same in Guidelines for Online Gaming by PIB Delhi on 03 Feb. 2023.

¹⁵Harshit Bansal, Advertisement Regulation in India: A Right Step in the Right Direction?, Jus Corpus Law Journal, available at <https://www.juscorpus.com/wp-content/uploads/2023/02/225>, accessed on Feb. 27, 2023.

¹⁶Section 17 states that a complaint relating to violation of consumer rights or unfair trade practices or false or misleading advertisements which are prejudicial to the interests of consumers as a class, may be forwarded either in writing or in electronic mode, to any one of the authorities, namely, the District Collector or the Commissioner of regional office or the Central Authority

- (c) ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act or the rules or regulations made thereunder;
- (d) ensure that no person takes part in the publication of any advertisement which is false or misleading.

As per Section 19 (1) the Central Authority may, after receiving any information or complaint or directions from the Central Government or of its own motion, conduct or cause to be conducted a preliminary inquiry as to whether there exists a prima facie case of violation of consumer rights or any unfair trade practice or any false or misleading advertisement, by any person, which is prejudicial to the public interest or to the interests of consumers and if it is satisfied that there exists a prima facie case, it shall cause investigation to be made by the Director General or by the District Collector. In regard to remedies section 39 (1) of the Act states that where the District Commission is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services or any unfair trade practices, or claims for compensation under product liability are proved, it shall issue an order to the opposite party directing him to do one or more of the following, namely:—... (l) to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement; (m) to provide for adequate costs to parties; and (n) to cease and desist from issuing any misleading advertisement. Against offences and penalties section 89 states that any manufacturer or service provider who causes a false or misleading advertisement to be made which is prejudicial to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

The Central Consumer Protection Authority on June 9th of 2022 issued guidelines aiming to further protect consumers from claims and promises from advertisements that are misleading, baseless, unjustified, unrealistic, false, etc. This was formed by the powers vested with the CCPA under Section 18 of the Consumer Protection Act, 2019 to protect consumer rights, such as the Right to be informed, the Right to choose, and the Right to safeguard against potentially misleading products and services, granted under Section 2(9) of the CPA 2019. The guidelines are applicable to all types of advertisements published on television, radio, print, and social media. They lay down the conditions for non-misleading and valid advertisements¹⁷. These guidelines, additionally define a few terms like ‘surrogate advertisement’, ‘bait advertisement’, and ‘free claim advertisement’¹⁸. They are in addition to and not in derogation of such regulations in other laws like the Press Council Act, 1978 (37 of 1978) and the Cable Television Networks (Regulation) Act, 1995 (7 of 1995).

Section 6 of the Cable Television Networks (Regulations) Act, 1995 provides that no person shall send or transmit through a cable service any advertisement unless such advertisement is in conformity with the advertisement code prescribed under the Cable Television Networks (Amendment) Rules, 2021. However, the provision above does not apply to programs of foreign satellite channels which can be received without the use of any specialized gadgets or decoder. Rule 7 of the Cable Television Networks (Amendment) Rules, 2006 lays down the “Advertising Code” for cable services which have been formulated to

¹⁷G.S. Bajpai, The new rules to keep advertisements in check, TheHindu, July 06, 2022

¹⁸Centre issues ‘Guidelines on Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022’, 10 Jun 2022 by PIB Delhi

conform to the laws of the country and to ensure that advertisements do not offend morality, decency and religious susceptibilities of the subscribers. In Rule 7¹⁹ sub-rule (12) was inserted stating where the Central Government is satisfied that the advertisement of any channel is not in conformity with the Advertising Code, it may, after giving an opportunity of hearing to the cable operator, and by an order in writing, prohibit the transmission or re-transmission of any such channel or programme in accordance with the provisions of section 20 of the Act. CCPA notified the Guidelines on Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 to keep advertisers in check against misleading or false advertising practices. For violation of provisions related to misleading advertisements under the Guidelines, the CCPA can impose a penalty of INR 10 lakhs on manufacturers, advertisers and endorsers. For subsequent violations, the CCPA may impose a penalty extending up to INR 50 lakhs²⁰. As per the CPA, the CCPA may also prohibit the endorser of a misleading advertisement from making any endorsements for up to one year, which can extend to 3 years on subsequent non-compliance. The Guidelines' primary goal is to encourage advertising that upholds consumer rights, particularly the right to information, the right to make informed decisions, and the right to protection from possibly dangerous goods and services.

Judicial Attitude relating to Misleading Advertisement

Due to the intense competition in the market, the resulting pressure to draw in more customers, and the persistent drive of traders to increase their sales, profits, and business, advertisers frequently use false and misleading campaigns without supplying any empirical or empirically supported evidence to support their claims. These deceptive advertisements undoubtedly mislead customers, harm competitors, and harm the economy. The courts have attempted to strike a balance when deciding various cases between protecting the right to commercial speech²¹ and the interests of consumers and competitors in order to ensure healthy and ethical competition between businesses and to safeguard the gullible customers from becoming victims of any false advertising²². Sometimes competitive advertisements, are confused to misleading advertisements²³ but they cannot be said to be misleading and, are permissible as held in *Tata Press Limited Vs. Mahanagar Telephone Nigam Limited and Others*²⁴, as advertising is essential for economic activity²⁵. It informs the consumers of the existence of various goods and services, the quality of these products and services, the product origin etc²⁶. It also builds up reputation. It is in this context that the Supreme Court

¹⁹Cable Television Networks (Amendment) Rules, 2021

²⁰PIB Delhi 08 Feb 2023

²¹The Supreme Court referred to *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council Inc.*, (1975) 421 US 748 and observed in paragraph 15 that it is almost settled law in the United States that though "commercial speech" is entitled to the First Amendment protection, the Government was completely free to recall "commercial speech" which is false, misleading, unfair, deceptive and which proposes illegal transactions.

²²False and Misleading Advertisements in India, available at <https://www.lexology.com/library/detail.aspx?g=55951606-036e-4f42-b0dd-156a32cd53b4> accessed on Feb. 27, 2023.

²³ In *Havells India Ltd. v. Amritanshu Khaitan* (2015) 62 PTC 64, the Delhi High Court clarified the difference between comparative advertising and misleading advertising and disparagement. It observed that comparative advertising is healthy and encouraged in the spirit of competition, however, disparagement is not; and a cause of action shall arise in case of a misleading advertisement.

²⁴(1995) 5 SCC 139

²⁵In *Reckitt & Colman of India Ltd. v. M.P. Ramchandran and Anr.*, 1999 (19) PTC 741 referred to for the following propositions relating to comparative advertising:

(a) A tradesman is entitled to declare his goods to be best in the world, even though the declaration is untrue.

(b) He can also say that his goods are better than his competitors', even though such statement is untrue.

(c) For the purpose of saying that his goods are the best in the world or his goods are better than his competitors' he can even compare the advantages of his goods over the goods of others.

(d) He however, cannot, while saying that his goods are better than his competitors', say that his competitors' goods are bad. If he says so, he really slanders the goods of his competitors. In other words, he defames his competitors and their goods, which is not permissible.

(e) If there is no defamation to the goods or to the manufacturer of such goods no action lies, but if there is such defamation an action lies and if an action lies for recovery of damages for defamation, then the Court is also competent to grant an order of injunction restraining repetition of such defamation.

²⁶*Reckitt Benckiser India Private Limited Vs. Hindustan Unilever Limited* 2021 SCC OnLine Del 4896

held that —commercial speech is a part of the freedom of speech and expression guaranteed under Article 19(1) (a) of the constitution²⁷.

In the case of *T. V. Today Network Limited vs News Laundry Media Private*²⁸ Delhi High Court held that, “Commercial Disparagement would occur when one player in the field derides a rival and belittles or discredits or detracts from the reputation of such a rival in respect of its products, services or business. While claiming to be the best, any statement about a competitor’s goods, which could be untrue or misleading and is made to influence or tend to influence the public, would amount to disparagement.” Indian automobile maker Maruti Udyog Ltd (MUL) was asked by the Delhi District Consumer Forum to pay Rs one lakh as compensation to the complainant as compensation for “inducing” him to buy a car through misleading advertisements on its mileage. The advertisement showed the car of MUL to provide mileage of 16.7 km/litre but in reality, provided 10.2 km/litre²⁹. The Customer Complaints Council of ASCI found that the claims of Hindustan Unilever Ltd (HUL) for its lever ayush soap saying 'based on 5,000-year-old ayurved scriptures with 15 ayurvedic herbs' besides other claims were inadequately substantiated and are misleading³⁰. HUL has made a habit of introducing such false and misleading advertisements to dupe members of the public and increase its market share dishonestly³¹.

The law on deceptive advertising is constantly changing, and the Supreme Court's ruling in *Horlicks Limited v. Zydus Wellness Products Limited*³² adds to the lengthy list of rulings on deceptive advertising. It is noteworthy that the High Court permitted the publication of the same commercial in print media but prohibited its broadcast on television. We are aware that the audience effect of print and electronic media is what distinguishes them from one another. Electronic media needs stricter regulations because it combines audio-visual techniques and is more likely to influence its audiences. As a result, the same advertisement was permitted to appear in paper media but prohibited from airing on television. *Bright Lifecare Private Ltd v Vini Cosmetics Private Limited and Anr*³³ It has been specifically indicated that the advertisement shall not contain statements or visual presentations which directly, by implication, by omission, by ambiguity, or by exaggeration are likely to mislead consumers about the product advertised, the advertiser, or any other product or advertiser.

Conclusion

Advertising is a crucial component of any company's marketing plan, especially in today's rapidly technological world. It is a very strong tool with the capacity to influence consumers. And businesses deceive their clients using this power of manipulation. Advertisements occasionally make overstated claims in an effort to entice in customers. False advertising becomes more prevalent as a result of the expanding Indian economy and the booming advertising sector. As there is no active monitoring of the false advertising and

²⁷Dabur India Ltd. vs M/S Colortek Meghalaya Pvt. Ltd. ILR (2010) 4 Del 489 Delhi High Court stated that on the basis of the law laid down by the Supreme Court, the guiding principles for us should be the following: -

(i) An advertisement is commercial speech and is protected by Article 19(1)(a) of the Constitution.

(ii) An advertisement must not be false, misleading, unfair or deceptive.

(iii) Of course, there would be some grey areas but these need not necessarily be taken as serious representations of fact but only as glorifying one's product.

²⁸4827/2022 Pronounced on 29th July, 2022

²⁹Maruti Suzuki India Limited v. Rajiv Sharma

³⁰PTI, ASCI pulls up HUL, Ola, Vodafone, others for misleading ads, Economic Times, May 10, 2018

³¹Reckitt Benckiser (India) Ltd. v. Hindustan Unilever Ltd. 200 (2013) DLT 563

³²CS (Comm) 464 of 2019, pronounced on May 20, 2020

³³CS (Comm) 144/2022 & I.A. 3585/2022 pronounced on 7th July, 2022 in the High Court of Delhi

deceptive advertising is impossible to identify without a formal complaint. Only after the campaign has ended may a certain type of advertisement be stopped by the self-regulatory organization. Most of the time, the perpetrator avoids penalties by sending an apology letter. There are several authorities and agencies which look into the proper implementation of laws and formulate new codes. The current self-regulation paradigm, ASCI, is inadequate and ineffective. Its main task is to control the escalating numbers of unethical advertisements by self-regulation code. Under these guidelines have been laid down for specific categories of the advertisements. Other regulatory agencies are the Medical Council of India, Securities and Exchange Board of India, Telecom Regulatory Authority of India etc. The mechanism's mostly reactive approach, the outdated advertising code that is unable to keep up with new trends, and the lengthier time it takes to reach a decision are the key problems that have been discovered. Both of these factors may have a substantial impact on the practical repercussions of the decisions. In comparison to the large amount of the issue, these deficiencies lead to a very low number of complaints. It is essentially true that different regulations regarding advertising in general as well as those pertaining to certain industries and malpractices have instilled a sense of dread in the hearts of people who employ unethical techniques of advertising their products. But the lack of a single statutory regulatory authority makes the issue worse. It would be ideal to have a complete rule or regulation that covers all types of media advertising, provides clarity in the area, and serves as a one-stop shop for all issues related to advertising. The aim of such bodies must be to provide a safeguard against the use of misleading or unfair advertising for the promotion of products. This is where the role of ethics in advertisements become evident. Maintaining the moral component of advertising is crucial for both the benefit of consumers and the revival of Indian culture. The advertising industry must be ethical, which means it must adhere to certain ethical standards and not merely advertise for financial gain.