

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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NEED FOR UNIFORM LEGISLATION ON MEDIA ADVERTISEMENTS: AN OVERVIEW OF MISLEADING ADVERTISEMENTS. (FOCUSSING ON PATANJALI AYURVEDA PRODUCT'S BANNED)

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ABSTRACT:

In India, currently the advertising agency has none regulating authority at central level. A non-statutory body namely, the Advertising Standard Council of India (ASCI), controls and regulate the operations of advertising market. Therefore, it becomes mandatory that advertisements should be compliance by the advertisers by local and national rules and laws. In light of this, on July 9, 2024 the Supreme Court rules out Patanjali Ayurveda to remove 14 ayurvedic medicines from market for which license were suspended.

KEYWORDS:

ASCI Advertisements Patanjali Ayurveda Supreme Court Government

INTRODUCTION

India will be the Third largest economy in the world by 2035 as per Goldman Sachs. Since, early 1990s with the initiation of Globalization, Liberalization, and Privatization, the Indian market had boosted tremendously. The Indian Government focusing on the protection of consumer's interest, has been on regular basis promulgating regulations as to how product and services advertisements be presented before the public, digitally and physically. The industrialization and pumping economic growth has given it the need of the hour to regulate advertisement market. In the absence of regulatory authority and legislation at central level has made it difficult to govern the advertisement market. Therefore for protecting the consumer access and stakeholder's protection, it is necessary to have a uniform and strict legislation in the hands of a single regulator.

Key Laws and Regulations in India for Advertisement Market: -

1. **Drugs and Cosmetics Act, 1940-** Under the provisions of this Act, the Central Drugs Standard Control Organization (CDSCO), is the principal authority responsible for regulating medical devices in India.
2. **Companies Act, 1956-** This Act stipulates that without proper advertisement none of the companies are allowed to accept any deposits by general public.
3. **Advocate Act, 1961-** It prohibits advertisements by Indian advocates and legal firms. The main purpose of this Act is to curb the false advertisements by advocates.
4. **Consumer Protection Act, 1986-** Under this Act, misleading representation of by advertisements is banned.
5. **Cable Television Network (Regulation) Act, 1995-** Advertisements related to hamper religious sentiments are not allowed and also advertisements punishable under IPC are prohibited.
6. **SEBI Act, 1992-** It prohibits unfair and fraudulent trade in securities. It also prohibits distorted ad misleading advertisements which negatively influence the investors.
7. **Standard of Weight and Measures Act, 1976-** It does prohibit false and deceptive advertisements made by the companies.
8. **Emblem and Names (prevention of improper use) Act, 1950-** The British era use of surnames and titles are restricted under this Act.
9. **Food Safety and Standard Act, 2006-** Any false nutritional claims which is made by companies are prohibited by this regulatory body.
10. **Indian Medical Council Regulation, 2002-** Indian physicians are not allowed to make any advertisements of their services in any mode directly or indirectly. However, medical professionals are allowed to make press releases in following manner:
 - Declaration of charge,
 - Temporary absence from duty,
 - On starting their practice,
 - Any change in address,
 - Switching to another practice.
11. **Public Gambling Act, 1867-** It prohibits all kind of gambling activities in India. The Lotteries Act however allows concerned States subjected to prescribed conditions.
12. **Intellectual Property Rights**
13. **Indecent Representation of Women (prohibition) Act, 1986**

14. **Young Persons (harmful publication) Act, 1956-** This Act prohibits young persons under the age of 18 years to indulge in advertisements without permission of parents and/or guardians. Any such advertisements which encourage the young person to commit offences or act of violence or I any other matter is strictly prohibited.
15. **Tobacco Prohibition Act, 2003-** This Act prohibits advertisement of all the tobacco products either directly or indirectly in any media.
16. **Code for Commercial Advertising on Doordarshan and All India Radio-** No advertisements related to alcohol, tobacco and hurting religious sentiments are prohibited to be telecasted and/or broadcasted in any mean either directly or indirectly in any media.

Services and Products Banned from Advertising in India: -

1. Legal Services
2. Magical Remedies
3. Firearms, Weapons and Ammunitions
4. Infant Milk Products
5. Parental Determination of Sex
6. Human Organ Transplantations
7. Prize Chits and Money Circulation Schemes (banning) Act, 1978

An overview of ASCI: Self Regulation of Advertising

ASCI were established in 1985, is a self-regulatory council to promote advertising and enhance public confidence in advertisements.

Structure of ASCI: -

Comprise of four members from four sections

1. Advertising Agency
2. Advertisers
3. Media
4. Related sectors

Aim and Objectives of ASCI: -

1. Truthfulness and Honesty
2. To ensure advertisements are not offensive
3. No indiscriminate use of advertisements

4. Fair and competitive environment

Patanjali Ayurveda Case in light of ASCI: --

Patanjali Ayurveda on 9th July 2024, submitted in Supreme Court that its exclusive and franchise stores are instructed to remove 14 of Patanjali products, for which license were suspended. Yoga Guru Baba Ramdev, co-founder of Patanjali Ayurveda confessed that he had requested to pull out advertisements of these products from social media and e-commerce platforms.

Patanjali had been asked to file an affidavit stating that the advertisements on social media and e-commerce platforms had been removed as an order by a Bench of Justice Hima Kohli and Sandeep Mehta.

A clarification came from the Court on its 7th May order stating that the online media, print media and electronic media should produce a self-declaration that they are not promoting and/or advertising the Patanjali products on their channels, especially in the health and food sector. Applications have been forwarded by Advertising Associations of India and the Internet and Mobile Association seeking further clarification on the 7th May order of the Supreme Court.

Along with the stakeholders of the industry, the Bench has asked the Information Broadcasting Ministry and the Health Ministry and the Consumer Affairs Ministry about to hold a joined meeting against the 7th May order of the Supreme Court.

“Industry should not suffer in any manner....”- Justice Kohli said. An affidavit is to be filed by the Centre mentioning the outcome of the meeting within three to four weeks. The violation of Drugs and Magical Remedies Act of 1956 has been found and charged on Baba Ramdev and his associate Acharya Balkrishna for claiming that their products can cure diseases from Diabetes, Obesity, and even COVID-19 and a petition for the same have been filed.

Under the Rule-7 of Cable Television Network Rules, 1994, a self-declaration had been made in 7th May order for misleading advertisements in display, airing and printing.

The Supreme Court, under the guidelines of Prevention of Misleading Advertisements Act, 2022, said that no proof actually is known about the action taken. The Guidelines deal with

free advertisements claim, prohibiting the surrogate advertisements and advertisements prohibited by Law and that which are targeted with children.

“Bait Advertisements”, “Surrogate Advertisements” and “Endorsers” are specifically be defined.

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