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FALSE PROMISES, REAL HARM: SAFEGUARDING CONSUMERS IN THE FACE OF MISLEADING ADVERTISEMENTS

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ABSTRACT

Advertising has become widespread and influential in human life and society during the past few decades. Advertising is a crucial marketing tactic that has evolved significantly to impact consumer perceptions of a specific product. Advertisements promote products and educate consumers to facilitate them in making comparisons between similar things. Advertisements must be accurate and not deceptive. Typically, a thin boundary separates a "misleading advertisement" from an overstated advertisement designed to aggressively promote a product. Misleading advertising poses a major challenge, adversely affecting customers in different sectors. Deceptive marketing strategies frequently result in clients facing false promises, which ultimately lead to dissatisfaction and financial difficulties. Legislation, regulatory actions, statutory measures, and consumer education are essential in combating the negative impacts of misleading advertisements. This paper aims to examine and analyze the issue of misleading advertisements, misleading health claims and problems of deepfake in advertising, the role of ASCI, the legal protection available to consumers, and important judgments dealing with this issue.

Advertising is an essential component in the process of supplying consumers with the information they need to make educated choices about the products that are available on the market. Although the principal objective is to exhibit the favorable qualities of the products being advertised, there is a prevalent inclination to exclusively emphasize the merits of the endorsed merchandise while diminishing or excluding any negative attributes.

The deliberate or negligent promotion of products or services through the dissemination of false information constitutes misleading advertising. Regulations have been put in place by a number of governments to help prevent misleading advertising which is common concern around the

globe. Businesses may face legal repercussions for false advertising; therefore, it is vital to avoid making deceptive claims. Advertisers are obligated to provide evidence to back up their claims, employ language that is easy to understand, steer clear of making incorrect comparisons, and reveal relevant information. This facilitates the development of lawful, effective advertising campaigns that effectively reach their intended audiences.

THE ROLE OF ADVERTISING IN THE INDIAN SOCIETY

Advertisements have a significant influence on society, which cannot be denied, even to a minor extent. India's substantial and growing middle-class population makes it a major worldwide market with hundreds of millions of potential customers. International corporations focus on India's population for its workforce and as a potential market for their goods and services. Cinema personalities are clearly popular among the public. The cinema has had a profound influence on Indian society for many years, resulting in the widespread use of movie stars for advertising and promoting goods and services. This phenomena is more prevalent in India than in other countries.. While the impact of actors in films and ads on customers has been acknowledged and utilized for promoting government welfare policies, there is currently no legal requirement that holds them accountable. Even a cautious customer cannot deny being persuaded by commercials, which significantly effect consumer buying behavior. It is concerning that individuals exposed to these advertisements may link the positive traits of a celebrity endorsing a product with the qualities of the product itself, potentially leading them to believe in the product's virtues as portrayed in the ads. This may result in certain incorrect and misleading information about the product being transmitted to the customer and would be as the Act specifies 'prejudicial to the interests of the consumer. .

The visual effects, music, and content in commercials have a significant role in attracting customers psychologically to buy products, sometimes overshadowing truth.

ETHICS IN ADVERTISING

Advertising possesses ethical worth. Art and facts in commercial communication must adhere to ethical norms. Today, in a competitive market, advertisements must be honest and ethical. Misleading advertisements might damage the organization's credibility. To understand the truth in advertising, it should be examined from the consumer's perspective rather than a legal standpoint. The advertising business is sometimes condemned for disseminating deceptive or overstated assertions on the products, goods, and services being promoted. It is also seen as promoting behaviors or inclinations considered bad and cultivating a culture of excessive

consumption. It is challenging to clearly distinguish between truth and falsehood. The commercial is evaluated based on its effect and how well it is received by customers. The product must meet the claims made in its advertisement. Advertisements should be appropriate and not include any offensive content. It must be honest. Advertising is a social process that should adhere to established social standards and not offend our moral sensibilities.

THE CONUNDRUM OF MISLEADING ADVERTISEMENTS

Misleading advertising involves the use of deceptive details to persuade consumers to buy a product. Sincere representation of products, services, and prices is of the utmost importance for both manufacturers and sellers.

Companies employ hidden fee as deceitful tactics to deceive people into paying a higher price for promoted products, boosting profits without raising the product's price. Deceptive advertising involves presenting a product with a specific quality that is not accurate, knowing that it is actually faulty or of lesser standard. Angel Dusting is the practice of incorporating a minuscule amount of an element that does not offer any noticeable advantage to the user. A cereal may advertise that it contains twelve essential vitamins and minerals, but the amounts may not match the Reference Daily Intake standards.

Sellers employ the bait and switch tactic to lure buyers into buying a more advanced version of the original product. They advertise a low-cost product without actively marketing it, then later reveal that it is of lower quality when compared to the pricier alternative. The salesman then upsell customers by convincing them to buy the premium model that is not on offer.

Misleading or deceptive advertising is a pervasive concern within the marketing domain, encompassing the distribution of visual content or information that is misleading or implausible with regard to a product. Businesses use this tactic to advertise products by making false claims about the features or capabilities of the product. Consumers may be duped into purchasing counterfeit, defective, or potentially hazardous products as a result of such deceptive advertising. An example is the promotion of Juul E-Cigarettes¹ as a safe substitute for regular cigarettes, despite having elevated nicotine levels. Volkswagen's² promotion of "clean diesel" vehicles was

¹ Edwards, Erika. "Illinois County Sues e-Cigarette Maker Juul over Youth Marketing." NBCNews.com, NBCUniversal News Group, (14 August 2019), <www.nbcnews.com/health/kids-health/illinois-county-sues-e-cigarette-maker-juul-over-youth-marketing-n1042011> accessed on 23 February 2024

² "FTC Charges Volkswagen Deceived Consumers with Its 'Clean Diesel' Campaign." Federal Trade Commission, 30 Sept. 2019,

false because the business had been cheating on emissions testing for a long time, resulting in accusations by the Federal Trade Commission.

Consumers are advised to exercise prudence when confronted with claims that seem excessively favorable, as deceptive advertising transcends industry boundaries. It is advisable to remain updated on health alerts, safety notifications, product recalls, and other pertinent information to mitigate the potential for harm. Deception in generality delineates a regulatory framework pertaining to deceitful advertising practices in the insurance sector. It bans the use of advertisements that could mislead or defraud consumers, regardless of whether the promoted policy is actually given to the insured before the sale is completed. The legislation prohibits advertisements from containing misleading or deceptive content, particularly if the information is confusing or only comprehensible to those well-versed in insurance terms. The purpose of this regulation is to promote integrity and openness in the realm of insurance advertising.³

Deceptive pricing is regarded by consumers as a manipulative tactic intended to deceive and exploit unsuspecting purchasers. However, enterprises may rationalize these pricing strategies as crucial for their continued existence in fiercely competitive industries. By recognizing and examining both viewpoints, a deeper understanding of the intricacies related to misleading pricing can be attained.

Businesses employ a variety of tactics to influence customer behavior through deceptive pricing practices. A commonly employed strategy is the "bait and switch" method, which involves initially advertising a product or service at an alluringly low price to attract consumers. However, upon closer inspection, these individuals are dissuaded by the product or service's unavailability or substandard quality. To further boost the apparent worth of a later discount, "price anchoring" also entails setting an exaggerated initial price. Additionally, the presence of concealed fees and charges, including shipping expenses or service fees, obscures the actual overall cost.

The intricacy of contrasting items from various companies in advertising is emphasized by the possibility of deceit on the part of advertisers who choose to highlight certain parts of their product as superior while ignoring others. Consumer confusion is sometimes caused by this technique, which frequently uses phrases like "stronger" or "better" in comparison without giving the consumer an understandable reason for the comparison. In 1997, Pizza Hut and Papa John's

<www.ftc.gov/news-events/press-releases/2016/03/ftc-charges-volkswagen-deceived-consumers-its-clean-diesel> accessed on 23 February 2024

³ Deceptive Advertising , 80 HARV . L. REV. 1005 (1967)

were involved in a legal fight over the phrase "Better Ingredients. Better Pizza." The lawsuit was dismissed as a result of the Fifth Circuit Court of Appeals' determination that the slogan failed to provide consumers with an objective statement of fact upon which they could rely.⁴

THE PROBLEM OF DEEPPAKE TRICKERY IN THE REALM OF MISLEADING ADVERTISING

The progress of artificial intelligence and technology has resulted in several legal challenges, including the widespread use of deepfakes in advertising. Consumers find it difficult to detect these deepfakes because of their highly realistic and convincing appearance. Deepfake marketing can deceive consumers and cause privacy problems for the individuals shown in the manipulated information, presenting a substantial risk to consumer protection.

Deepfakes are digitally modified visual and auditory materials that portray individuals performing actions or uttering statements that were never genuinely executed or stated, often with the intent to deceive or exert influence over others. Illustrative instances comprise deepfake videos that portray well-known individuals such as Elon Musk and Joe Rogan endorsing products.

Deepfake content creation often constitutes a breach of privacy and intellectual property rights. Furthermore, unauthorized deepfake advertisements may potentially damage the reputations of the individuals depicted and be deemed deceptive and fraudulent, in violation of marketing regulations and privacy rights.

Ethical, legal, and commercial concerns have been raised in response to the proliferation of AI-generated representations on mainstream platforms such as Instagram and TikTok, including deepfake advertising. While this technology may facilitate the proliferation of false information and give rise to significant concerns, it also presents potential economic benefits when employed in an ethical and lawful manner.

The advancement of artificial intelligence-driven deep learning has led to dark patterns evolving into more complex and visually appealing techniques. Examples of unethical practices include utilizing manipulated images or videos of celebrities for marketing, spreading false political

⁴ Pizza Hut v. Papa John's Int'l (2000) United States Court of Appeals, Fifth Circuit. Sep 19, 2000. 227 F.3d 489 (5th Cir. 2000)

propaganda, distributing explicit content, and sharing deepfake media to get followers and sponsorships.

The definitions of consumer rights (sec 2(9), misleading advertisement (sec 2(28), and unfair trade practices (sec 2(47) of Consumer Protection Act,2019 are sufficiently broad to cover the use of deepfakes, although the majority of criminals remain unidentified. Courts can only issue ex-parte injunctions with limited possibilities for financial or punitive outcomes. This will not provide any reconciliatory advantages to consumers or individuals in a continuously growing internet expansion.

A significant portion of these deceptive adverts are seen on social media platforms. For example, individuals who use YouTube or Instagram may have encountered images or videos of famous individuals promoting lottery games and unfamiliar trading applications. An illustrative example is the legal case of Karen Hepp vs Facebook. A news anchor filed a lawsuit against Facebook for allowing an advertising promoting erectile dysfunction that used the anchor's altered photographs without her permission, promising viewers the opportunity to meet "single women." The US Court ruled in favor of Hepp, stating that her esteemed reputation could potentially mislead consumers into believing she supports the business.

Currently, organizations are not regulated by any law but instead follow a "self- regulation" model they have created, which includes Ethical Rules and Codes, to address the potential misuse of AI. This methodology has not been demonstrated to be effective and has only been used to prevent regulatory action and support the public relations efforts of these corporations. It is crucial for the government to establish preventive measures to ensure that advertisers do not use deepfakes or are required to disclose when advertisements containing deepfake contents.

MISLEADING HEALTH AND NUTRITIONAL CLAIMS IN ADVERTISING

The primary objectives of nutrition labeling policy and regulation of nutrition and health claims (NH claims) are to facilitate the identification of food health attributes for consumers to make healthier food choices and to prevent consumers from being deceived by misleading nutrition information.

The goal of front-of-pack nutrition labeling schemes is to help customers accurately differentiate between healthy and harmful goods.

It is the responsibility of the Advertising Standards Council of India (ASCI) to regulate and supervise the claims made on food labels in India. Labeling of Food Claims can be categorized into:

Nutritional claims give information about the nutrition aspect of foods. These assertions hold significance as they enable consumers to make informed choices by selecting products that offer distinct nutritional benefits in comparison to conventional foods. Nutrient content claims and nutrient comparative claims are the two types of nutrition claims. Illustrations of such terms comprise "fat-free," "low sodium," and "sugar-free," among others.

Claims based on health refers to the relation between a food product and its health benefit. Health claims include assertions such as "plant sterols reduce cholesterol" and "a diet rich in fruits and vegetables reduces the risk of developing certain cancers." Each of these claims describes the benefit, function, or risk reduction associated with a specific food item or component.

Non-addition claims refer to assertions concerning the absence of specific chemicals in a culinary product. The components that are excluded from this category are no added carbohydrates, no sodium salts, and no additives. In order to make a claim, the product in question must be devoid of any additives, sugar, or sodium. Supplementary terms or disclaimers may be employed to enhance consumer understanding of assurances pertaining to the omission of constituents, provided that they are conspicuously displayed and readily comprehensible on the product label.

Allegations in advertisements like it is baked and not fried, protein rich, low calorie, are also increasing. The customers are also willing to pay a higher price for the same.⁵

Regrettably, the proximity between guiding and misleading is often minimal, resulting to confrontations between the food sector, policy authorities, and consumers

LEGISLATIVE PROTECTION AGAINST THE ISSUE OF MISLEADING ADVERTISEMENTS: THE INDIAN SCENARIO

Several pieces of legislation have been enacted for the purpose of addressing the issue of misleading claims and advertisements that are made by businesses in relation to their products. Some of those legislation include Drugs and Cosmetics Act, 1940, the Food Safety and Standards Act, 2006 etc. The regulation of misleading advertisements in print media is the purview of the Press Council of India, in accordance with Section 14 of the Press Council Act 1978. Private satellite TV advertisements are governed by the Advertising Code. In addition, the Food Safety and Standards Authority includes provisions for the imposition of penalties for advertisements

⁵ Food Label Solutions, 'Decoding food labelling claims in India: what you need to know' (FoSol, 3 August 2023) <<https://www.foodlabelsolutions.com/info-centre/Packaged-Foods/decoding-food-labelling-claims-in-india-what-you-need-to-know/#:~:text=Nutrient%20content%20claims%20describe%20the,sodium%20than%20regular%20potato%20chips>> accessed 25 January 2024

that are misleading in relation to food products. Some of the existing regulatory authorities include the Insurance Regulatory Development Authority, SEBI etc.

In an effort to safeguard consumer interests and combat deceptive advertising, the Central Consumer Protection Authority (CCPA) in India has issued certain. The CCPA, established under section 10 of the Consumer Protection Act of 2019, has the authority to regulate issues concerning deceptive advertising, fraudulent business practices, and violations of consumer rights that have the potential to cause harm to the general public and consumers. Its primary objective is the safeguarding, enforcement, and protection of the rights of consumers in their entirety.

In case of United States of America, The Lanham Act and the Federal Trade Commission Act of 1914 provide civil litigation for misleading advertising, which involves misrepresenting goods or services under 15 U.S.C. § 1125(a)1. The FTC enforces these laws for consumers. Deceptive trade practices are governed by state legislation. For instance, California has enacted legislation that forbids the distribution of false or misleading information, carrying out penalties of both civil and criminal nature.

The UK's advertising business is regulated by the Advertising Regulations 2008 (CPR), which enforce the Unfair Commercial Practices Directive, a set of European regulations for consumer protection. The regulations evaluate unfairness in business- to-consumer transactions by applying four criteria to detect misleading advertising: non-compliance with professional diligence standards, false or deceptive conduct, failure to disclose important information, and aggressive tactics such as harassment, coercion, or undue influence. Advertisers in England, Scotland, Wales, and certain regions of Ireland must adhere to these limitations.

Despite the 32 years since the implementation of Consumer Protection Act in India, manufacturers and service providers persist in exploiting Indian consumers. Ads frequently make exaggerated claims in an effort to attract more customers, while truth and ethics frequently take a back position in a competitive marketplace. Advertisements must be truthful in order to affect consumer decision because they not only inform customers but also persuade them to buy a product.

ROLE OF ASCI IN PROTECTING CONSUMERS

A non-statutory self-regulatory organization, the Advertising Standards Council of India (ASCI) was founded in 1985 in accordance with Section 25 of the Companies Act, 1956. Complaints are addressed in accordance with the organization's Code of Advertising Practice (CAP), which endeavors to protect deceptive advertisements and promote truthfulness and integrity in advertising. The ASCI Code for Self- Regulation was developed by professionals and industries in advertising, in collaboration with representatives of those impacted by advertising. It was endorsed as fundamental principles by individuals, organizations, and groups involved in or interested in advertising practices.

It involves a dedication to truthful advertising and equitable competition in the marketplace. It represents safeguarding the lawful interests of consumers and all parties engaged in advertising, including advertisers, media, advertising agencies, and other contributors to advertising development or distribution. Guidelines have been created for advertisements with terms applicable to professionals, physicians, celebrities, and other relevant individuals. The ASCI code book contains rules and clauses about disclaimers on products, including specifications for type, font size, font language, and font color to prevent deceptive ads.

On the other hand, the ASCI is confronted with difficulties in implementing effective compliance due to the absence of enforcement tools and the fact that non-members are not complying with the regulations when complaints are filed against them. Prudent legislation that eradicates ambiguity and uncertainty is imperative in order to resolve forthcoming inconsistencies.

A report titled "Law enforcement for deceptive advertisements in India" was released by the Consumer Unity and Trust Society in 2012. On the other hand, despite the fact that the Consumer Protection Act and other pieces of legislation contain provisions to counter misleading marketing, the survey discovered that there are still cases in which complaints are made. Delays in verdict determination, ineffectiveness of legal and regulatory authorities, and the fact that self-regulation does not supplant statutory legislation are the primary shortcomings. The amount of time that passes between corrective actions and claims is excessive and cannot be tolerated.

REMEDIES AVAILABLE AGAINST MISLEADING ADVERTISEMENTS

Manufacturers and endorsers must be responsible for the claims made in their ads as mandated by Section 21 of the Consumer Protection Act, 2019. The Act empowers the Central Authority to investigate and halt misleading or false marketing, showing lawmakers' quick reaction to

needed enhancements in Consumer Protection. Section 21(2) permits the Central Authority to levy fines between 10 to 50 lakh rupees for deceptive advertising and prohibits endorsements in misleading commercials for 1-3 years. The consequences discourage celebrities from endorsing deceptive claims in ads. Publishers might face fines of up to 10 lakh rupees for printing deceptive advertisements. Section 21 permits the defense of an endorser if they have demonstrated 'reasonable diligence' in verifying the claims made in the advertisement. Section 21, Clause 7 specifies the basis for determining penalties, including characteristics such as population, location, frequency, duration, and demographics impacted by the advertisements. Section 21 Clause 8 highlights the democratic and natural principle of ensuring citizens have a voice before any command is given, thereby avoiding the Central Authority from being utilized as a tool of tyranny..⁶

For the purpose of lodging complaints against online e-commerce portals that disseminate deceptive advertisements, consumers may approach the Advertising Standards Council of India (ASCI)⁷. A suo motu complaint from an ASCI Board member, a member of the Secretariat, or a member of the Consumer Complaints Council is accepted by the council. Complaints can be lodged by consumers, government officials, consumer groups, and advertising against each other. Allegations of deceptive advertising in India are addressed by the council.⁸ The procedure entails the Secretariat soliciting feedback from the advertiser or agency, granting the advertiser a chance to convey their position, and rendering a determination within a timeframe of four to six weeks. The advertiser is notified within five days and is given two weeks to comply if the council determines that the advertisement is deceptive, misleading, or unsubstantiated. Important rulings by Indian courts regarding misleading marketing are also mentioned here.

*Francis Vadakkan v. The proprietor, A-one medicals and Ors*⁹

The Kerala High Court ordered the maker of a hair growth lotion and the brand endorser to compensate the complainant, for their false marketing that resulted in dissatisfaction and harm to the complainant.

⁶ Mr. G.K.Dhir, Dr. Sangeeta Taak, Dr. Manjit Kaur Bhatia, Text Book on Consumer Protection Act 2019: Alongwith Rules, Regulations and Latest Case Laws (Satyam Law International, 2023)

⁷ Singh and Associates, 'Advertisement standard code of India – controlling the contents of advertisements in India' (Lexology, 12 November 2023)
<<https://www.lexology.com/library/detail.aspx?g=73a717ea-48d7-43ca-8286-9b717a6a8a2f>> accessed 25 January 2024

⁸ Bhashwat Prakash, " (Legalservices India, 11 August 2022)
<<https://www.legalserviceindia.com/legal/article-11700-detailed-analysis-of-the-advertising-standards-council-of-india-asci.html>> accessed 16 February 2024

⁹ CC No.345 of 2012

Dabur India v. Colourtek Meghalaya Pvt. Ltd.¹⁰

The Delhi High Court made certain standards on the basis of misleading advertisements.

The following are:

Advertisements are classified as commercial communication and fall under the scope of Article 19(1)(a) of the Constitution of India.

Advertisements must be accurate and not be misleading in nature.

Reckitt & Colman of India Ltd. v. M.P. Ramchandran¹¹

The Calcutta High Court ruled that a seller can claim that their goods are superior to their competitor's, even if the claim is untrue. When making a statement, a seller can compare the benefits and drawbacks of their products with those of competitors. However, they are not allowed to speak negatively about their competitors' products. If there is no defamation, the competitor cannot take legal action for misleading advertising or disparagement.

Horlicks Limited v. Zydus Wellness Products Limited¹²

Horlicks Limited filed a lawsuit against Zydus Wellness Products to secure a permanent injunction against their commercial claiming that one glass of Complian is equal to two glasses of Horlicks. Horlicks initiated legal action in the High Court, claiming that the advertisement was deceptive and damaging to its reputation. Zydus claimed that the commercial was not deceptive because it contained accurate information according to the correct serving size of both products. Horlicks initiated legal action against Zydus for an advertisement in print media. The High Court initially imposed a interim order against Zydus to stop them from launching an advertisement. The injunction was lifted when Zydus voluntarily made changes to the commercial by including a disclaimer about serving size and agreed to only print the changed version

The Supreme Court has issued a stringent ruling against Patanjali Ayurveda, a firm endorsing Baba Ramdev's Ayurvedic products, for publishing misleading advertisements. Patanjali was condemned for running commercials that explicitly attack allopathic medications. Patanjali has been warned by the court for their deceptive advertising and faces a penalty of Rs 1 crore for each product that contains false claims. The court has mostly concentrated on dealing with false advertisements and has stated their wish to steer clear of the "Allopathy v. Ayurveda" debate. The court found Patanjali's activities improper and imposed a complete ban on any future

¹⁰ 2010 SCC OnLine Del 391

¹¹ 1998 SCC OnLine Cal 422

¹² AIR ONLINE 2020 DEL 701

advertising or branding of Patanjali medicinal products till further notice.

Thus it is evident that the Indian judiciary has been playing a pivotal role in curbing the issue of misleading advertising.

CONCLUSION

Consumers have access to numerous adverts across several platforms. Abundant misleading and inaccurate marketing have influenced customer behavior. They have encountered numerous misleading or inaccurate statements regarding items and services that were promoted. If consumers find that businesses are dishonest or deceptive in their advertising, they are likely to stop supporting the brands they are loyal to. Misleading marketing alters customer behavior by prompting people to distrust all forms of advertising. They are compelled to undergo an extensive consumer purchasing procedure where they must authenticate information before deciding whether to purchase the service or product.

Preserving ethical corporate practices and safeguarding consumer interests are crucial in addressing this issue. Consumer protection laws are crucial for ensuring that advertising practices adhere to ethical standards and truthfully represent product attributes. The regulations aim to promote fair competition in the market and empower customers to make informed decisions.

Consumer protection regulations must be rigorously implemented, with harsh consequences for violations, to prevent deceptive advertising. Companies are required to offer complete transparency regarding the advantages and constraints of their products and adhere to rigorous standards for advertising assertions. Misleading advertising requires a comprehensive approach involving transparent advertising practices, robust consumer protection laws, effective enforcement, and consumer education.