

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

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NAVIGATING THE DIGITAL MARKETPLACE: THE EVOLVING LEGAL AND ETHICAL BOUNDARIES OF CORPORATE ADVERTISING IN INDIA

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Abstract:

This paper presents a comprehensive analysis of the legal and self-regulatory framework governing corporate advertising in India, tracing its evolution from traditional media to the contemporary digital ecosystem. While foundational statutes such as the Consumer Protection Act, 2019, the Cable Television Networks (Regulation) Act, 1995, and the Cigarettes and Other Tobacco Products Act, 2003, establish core prohibitions against misleading claims, indecent content, and the promotion of harmful products, the rapid proliferation of digital and social media has necessitated significant regulatory adaptation. This study critically examines the extension of advertising norms into the online realm through the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and the updated guidelines from the Advertising Standards Council of India (ASCI) for influencer marketing and virtual advertising. Through doctrinal analysis and landmark case law—including *Hamdard Dawakhana*, *Dabur v. Colortek*, and *Ajay Gautam v. Amritsar Eye Clinic*—the paper argues that the core principles of consumer protection, truthfulness, and public interest remain paramount. However, it identifies critical emerging challenges, including the governance of algorithmically-targeted ads, deepfake endorsements, sustainability (“greenwashing”) claims, and advertising in online gaming. The paper concludes that India’s regulatory approach is transitioning towards a hybrid model, blending co-regulation (ASCI) with state-backed legislation, yet requires greater agility, specialized digital literacy, and

proactive enforcement to ensure advertising integrity in an increasingly fragmented and interactive media landscape.

Keywords: Advertising Law, Consumer Protection, ASCI, Digital Media Ethics Code, Influencer Marketing, Misleading Advertisement, Comparative Advertising, IT Rules 2021, Deepfakes, Greenwashing.

1. Introduction

The word advertising originates from the Latin term *advertere*, meaning “to turn attention towards.” In the modern commercial context, advertising refers to a structured form of communication through which information about products, services, or ideas is conveyed to the public by an identifiable sponsor. It commonly involves paid, non-personal communication intended to inform, persuade, and influence consumer behaviour. Advertising serves as a crucial link between producers and consumers by disseminating information relating to product availability, features, and utility in an increasingly competitive marketplace.¹

In an era marked by mass production, technological advancement, and intense market rivalry, advertising has become indispensable to business operations. It functions as a significant tool for sales promotion by educating and persuading consumers, thereby increasing demand and enabling firms to expand their market reach at both domestic and international levels. Advertising also facilitates the introduction of new products and services by providing enterprises—particularly new market entrants—with visibility and access to potential consumers within a short span of time. Sustained advertising efforts contribute to reputation building by fostering brand recognition, enhancing goodwill, and enabling businesses to communicate their commitment to consumer satisfaction, which is vital for long-term survival in a competitive environment.

Further, advertising acts as a catalyst for research and development by encouraging innovation and product differentiation in response to competitive pressures and evolving consumer preferences. It also performs an important consumer education function by informing the public about product features, uses, and value, thereby influencing lifestyle choices and contributing to improvements in the standard of living. Beyond its commercial and social role, advertising

¹ Ashwini Siwal, *Regulating Digital Advertising in India: The Interplay of Law, Technology, and Ethics*, 15 *J. Media L. & Ethics* 45, 50–52 (2022).

serves as a major source of financial support for media organizations, allowing print and electronic media to sustain operations, improve content quality, and extend outreach to a wider audience.

Despite its economic and social significance, the persuasive power of advertising necessitates legal regulation to prevent abuse. Practices such as misleading or deceptive advertisements, objectionable content, unfair comparative claims, surrogate advertising, and improper endorsements pose serious risks to consumer rights and market fairness. In India, corporate advertising is regulated through a combination of statutory provisions, regulatory rules, and judicial interpretations, including frameworks governing television and media advertising. These mechanisms aim to strike a balance between commercial freedom and the protection of consumer interests and public morality.

This paper undertakes a critical examination of the legal and regulatory framework governing corporate advertising in India, with particular emphasis on the boundaries and limitations imposed under Indian media law. It analyses key areas such as misleading advertisements, comparative advertising, endorsements and testimonials, surrogate promotions, and advertisements relating to regulated products and services, supported by relevant judicial decisions. By situating advertising within its legal context, the study seeks to highlight the challenges posed by evolving media practices and assess the adequacy of existing regulatory mechanisms in addressing contemporary advertising concerns.²

2. Factors Necessitating the Study of Advertising Boundaries

Factors affecting the need to investigate the boundaries and constraints of corporate advertising in the context of Indian media law:

- 1) Consumer Protection:** Corporate research on the boundaries and limits of advertising helps to assure consumer protection. We may analyze if advertising techniques preserve honesty, openness, and fairness by looking at legal frameworks and rules. Understanding the relevance of these borders helps to build strong consumer protection mechanisms.³
- 2) Ethical Advertising Practices:** The research throws light on the ethical aspects involved in corporate advertising. It aids in the identification of behaviors that may be deceptive,

² Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, amended 2016 (India).

³ Consumer Protection Act, No. 35 of 2019, India Code (2019).

offensive, or damaging to public interests, allowing for a critical assessment of advertising material and its influence on society. Corporations may connect their advertising tactics with ethical standards by knowing the limits.

- 3) **Fair Competition:** Advertising boundaries and constraints foster fair competition among corporations. We may analyze whether corporations participate in measures that ensure a fair playing field by investigating legislation governing comparable advertising, endorsements, and testimonials. Understanding these limits promotes a fair corporate climate and avoids undue advantage via deceptive statements or competition disparagement.
- 4) **Legal Compliance:** The research delves at corporations' legal requirements in terms of advertising. Corporates may verify compliance with relevant rules and regulations by investigating legal frameworks. Understanding the limits aids in the prevention of legal ramifications and encourages acceptable advertising activities.

3. These practices are governed by the following regulations:

3.1 The Consumer Protection Act, 1986:

This statute gives customers the right to know about the quality, quantity, purity, standard, and pricing of products and services. Section 6 of the act seeks to protect customers from unfair commercial practices such as misleading advertising, misrepresentations, and other deceptive conduct.

3.2 Cigarettes and Other Tobacco Products (Prohibition of Advertising and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act, 2003⁴:

Section 5 of this legislation outlaws both direct and indirect tobacco product promotion across all media channels, including audio, visual, and print.

3.3 Cable Television Networks (Regulations) Act, 1995 and Cable Television Networks (Amendment) Rules, 2006⁵:

Section 6 of the Cable Television Networks (Regulations) Act, 1995⁶ states that no person may transmit or re-transmit any advertising over a cable service unless it complies with the

⁴ Cigarettes & Other Tobacco Products (Prohibition of Advertisement & Regulation of Trade & Commerce, Production, Supply & Distribution) Act, No. 34 of 2003, Acts of Parliament, 2003 (India).

⁵ Cable Television Networks (Regulation) Amendment Rules, G.S.R. 652(E), (India) (2006).

⁶ Cable Television Networks (Regulation) Act, No. 7 of 1995, India Code (1995).

advertisement code provided by the Cable Television Networks (Amendment) Rules, 2006. There is an exemption for foreign channel programming that may be received without the need of specialist equipment or decoders. Rule 7 of the Cable Television Networks (Amendment) Rules, 2006 establishes an advertising code for cable services, which must conform with national laws and guarantee that commercials do not violate customers' morals, decency, or religious sensibilities.

3.4 Code for Commercial Advertising over All India Radio:

Advertisements are forbidden from insinuating that children must purchase or urge others to acquire items or services, with the implication that failing to do so would be disloyal or negligent. Advertisements should not give the sense that children who do not own or use the promoted product are inferior to others, or that they are deserving of judgment or scorn. Furthermore, ads should not endanger children's safety or encourage unhealthy behaviors such as playing in risky regions or indulging in activities with potentially harmful materials. It is definitely banned to represent youngsters begging or acting inappropriately.

3.5 Code for Commercial Advertising on Doordarshan:

Advertisements on Doordarshan, like those on All India Radio, should not convey the concept that children have a responsibility or obligation to buy or support items or services. Advertisements must not indicate that children who do not possess or use the offered product are inferior to their classmates, or that they are deserving of criticism or scorn. Furthermore, marketing must not risk children's safety or arouse interest in harmful behaviors. It is, for example, illegal to portray youngsters playing in dangerous locations or engaged in activities involving hazardous materials. It is definitely banned to depict youngsters begging or acting inappropriately.

3.6 The Advertising Standard Council of India (ASCI) code of ethics for advertising in India⁷:

Advertisements should not diminish the need of parental supervision and advice in ensuring that children make healthy food choices.

⁷ Advertising Standards Council of India, Code for Self-Regulation of Advertising Content in India ¶ 2 (2018), <https://ascionline.in/images/pdf/ascicode.pdf>.

3.7 FBAI (Food & Beverage Alliance of India):

The Food and Beverage Association of India (FBAI) is a collaboration of food and beverage firms devoted to encouraging active and safe lifestyles among Indian consumers. They've implemented the 'India Policy on Marketing Communications to Children,' which limits advertising to children under the age of 12. Member firms agree to either advertise only goods that fulfill the FBAI Common Nutrition Criteria to children under the age of 12 or to avoid advertising to this age group entirely. The FBAI Common Nutrition Criteria, which went into effect on December 31, 2017, establishes strict guidelines for goods marketed to children.

4. Boundaries and Limits on Advertising by Corporates:

4.1 False or misleading advertising:

Advertisements, both print and digital, are an effective medium for promoting a product, brand, or service. The primary goal of advertising is to educate target consumers about the goods and services being supplied, persuade them that their facilities are superior to the competition, and keep potential customers informed about their products/services. As a result, the adverts should help a person to make well-informed purchasing choices. Due to the intense market competition, the resulting pressure to attract more consumers, and the constant desire of traders to increase their sales, profits, and business, advertisers frequently resort to false and misleading campaigns with no scientific or clinical data to back up their claims. For example, commercials for health treatment that make unfounded promises for treating Covid-19, or advertisements for schooling that make lofty claims about career assurances, etc.

False ads definitely deceive customers while also injuring and harming competition. In reality, they violate a variety of consumer rights, including the right to be informed, to choose, and to be protected from potentially harmful products and services. As a result, false ads have a detrimental influence on customer choices. As a result, advertising should not include any statement, visual representation, or claim that is untrue, deceptive, or likely to mislead consumers. Advertisements must be accurate, with no exaggeration or unfounded claims about a product or service. The ASCI has created a code of ethics to which advertising must adhere. The law states that ads must not include any statement or visual presentation that might mislead customers.

4.2 Indecent or abusive advertisement content

An advertising is regarded impure if it encourages sensuality and stimulates impure ideas in

the mind of an average man of normal temperament, and has the potential to deprave and corrupt individuals whose brains are susceptible to such immoral influence. Such commercials are judged harmful to public morality and may have a destructive impact, depraving and debauching people's brains. Such material in commercials may have a harmful influence on society, cultural values, and public attitude. As a result, corporate advertising must retain decency and conform to cultural sensitivity.

Advertising rules, such as the ASCI code of ethics, establish precise requirements to guarantee the avoidance of indecent or objectionable material. Sexually explicit or suggestive advertisements are strictly forbidden since they might be seen as disrespectful or improper. These limitations are intended to protect vulnerable audiences, promote social peace, and prevent the spread of dangerous or objectionable information. The ASCI code of ethics is very important in controlling advertising material in India. It establishes responsible advertising guidelines and guarantees that commercials do not injure or insult the public. Advertisements that are likely to cause injury, violate cultural or religious sensibilities, or go against public interest are prohibited under the code. Adherence to these rules contributes to the preservation of a polite and ethical advertising environment.⁸

Advertising rules strive to achieve a balance between freedom of speech and the need to safeguard public sensitivities by forbidding obscene or unpleasant material. They guarantee that advertising efforts are courteous, socially responsible, and consistent with the dominant cultural and moral norms of the society in which they are distributed.

4.3 Product disparagement and comparative advertising

Manufacturers of products and services are concerned about comparative advertising and product disparagement. Comparative advertising is a method employed by businesses to position their product as superior to that of a rival. When a comparative commercial offers a comparison that is inaccurate and/or disparaging, it is considered product disparagement. Clearly, there is a narrow line to be drawn between the two notions, one that warrants careful consideration from trademark owners, particularly because such marketing may readily impact customer behavior to a brand's favor or disadvantage. Because advertising in India is primarily self-regulated, there is no oversight over how corporate organizations sell their brands. The law

⁸ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E) (India).

on trademarks specifies when comparable advertising might be considered infringement, and when conflicts spiral out of hand, the courts step in. This occurred recently in a case involving two health food drinks, in which the Delhi High Court discussed the distinction between comparison advertising and disparagement (*Horlicks Ltd. versus Heinz India Private Limited*⁹).

comparable advertising is generally lawful and permitted provided some fundamental requirements are met. The Advertising Standard Council of India (ASCI) provides a few guidelines for making comparable claims in its Code for Self Regulation of Advertising Content in India. Comparative advertising is often used in the case of similar items that suit the same demands and are designed for the same purpose. The comparison of competing items must also be true and accurate, and it must be proven. Most significantly, the product comparison should not mislead customers about either the marketed product or the product with which it is compared; and the marketing should not unjustly criticize, attack, or denigrate other items.

The Trademarks Act of 1999 specifies the situations in which the use of a registered brand in ads may be deemed infringement. Infringement occurs if the advertisement (a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or (b) is detrimental to its distinctive character; or (c) is detrimental to the reputation of the trade mark. Section 30(1) provides a defense for the use of trademarks in comparative advertisements, effectively reiterating key terms from Section 29(8), stating that advertisements would not be considered infringing if they are (a) in accordance with honest practices in industrial or commercial matters, and (b) do not unfairly advantage or harm the distinctive character or repute of the trade mark.

4.4 Testimonials and endorsements

Endorsements and testimonials are important components of advertising in India, adding to the legitimacy and persuasiveness of commercials. However, in order to preserve openness and avoid deceptive tactics, particular standards and criteria must be followed. From a legal standpoint, this section elaborates on the standards and constraints of endorsements and testimonials in Indian advertising.

⁹ *Horlicks Ltd. v. Heinz India Private Ltd.*, (2009) 160 D.L.T. 596 (Delhi H.C.) (India).

- a. *actual and Actual Experience*: Advertisements including endorsements or testimonials must be based on the endorser's actual experience or viewpoint. The endorser should have utilized the product or service and have a genuine belief in its features or advantages. The legal framework firmly prohibits falsely attributing endorsements.
- b. *False or Misleading Endorsements*: The law expressly bans false or misleading endorsements. Advertisements may not make assertions implying the endorser's experience or viewpoint when it has not been gained legitimately. Misleading endorsements may create a misleading image and mislead customers about the product's features or effectiveness, which is against fair advertising principles.
- c. Advertisers are required by law to disclose any substantial links or business ties that exist between the endorser and the advertiser. This disclosure requirement requires that any remuneration, free goods, or other incentives received by the endorser for delivering the endorsement be fully declared in the advertising. The goal is to guarantee openness and provide customers the information they need to make an educated choice regarding the marketed product.
- d. Advertisers must follow certain principles and laws in order to retain trust, honesty, and legal compliance in their advertising strategies. Through its code of ethics, the Advertising Standards Council of India (ASCI) offers further advice and standards that serve as a benchmark for industry best practices. Advertisers should align their operations with the ASCI code and respond promptly and responsibly to any consumer complaints or concerns about misleading or deceptive endorsements.

5. Products and Services Under Special Regulation

Certain goods and services are subject to additional advertising rules. These restrictions are in place to address particular public health, safety, and consumer protection issues. Examples of items and services regulated by such rules include:

5.1 Tobacco Items:

Tobacco product advertising is absolutely forbidden in India. The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act of 2003 (COTPA) and its supporting regulations expressly ban any kind of tobacco product advertisement or promotion. Print, television, web, and outdoor advertising are all subject to regulations. The goal of these regulations is to discourage tobacco use while also protecting public health.

5.2 Alcohol:

Alcohol advertising in India is governed by a variety of state laws and standards. Each state has its own set of rules for advertising and promoting alcoholic beverages. To avoid adverse consequences, underage drinking, and overconsumption, these restrictions usually regulate the content, time, and manner of alcohol ads. These restrictions are enforced by state excise departments and liquor control boards.

5.3 Prescription medications:

Prescription medicine advertising is regulated to assure medication safety and effectiveness and to protect customers from incorrect or misleading promises. The Drugs and Cosmetics Act of 1940 and the Drugs and Magic Remedies (Objectionable Advertisements) Act of 1954¹⁰ control pharmaceutical product advertising in India. The Drug Controller General of India (DCGI) or the State Drug Control Authority must authorize ads for prescription pharmaceuticals under the legislation. Advertisements must provide accurate and comprehensive information about the medicine, such as its intended usage, adverse effects, and contraindications.

5.4 Infant Formula

To preserve child health and support proper feeding habits, the advertising of infant formula and baby food items is controlled. The baby Milk Substitutes, Feeding Bottles, and Infant Foods (Regulation of Production, Supply, and Distribution) Act of 1992 (IMS Act) and its supporting regulations govern baby formula advertising and marketing. These restrictions prohibit fraudulent advertising, misleading statements, and the marketing of breast milk substitutes as preferable to nursing. The goal is to encourage healthy newborn feeding behaviors while discouraging poor feeding practices.

When marketing items and services governed by particular legislation, marketers and corporations must follow these strict requirements. Noncompliance with these standards may result in fines, legal repercussions, and brand reputation harm. Advertisers should get acquainted with the relevant rules and regulations regulating the individual goods or services and ensure that their advertising tactics are in accordance with the specified standards.

¹⁰ Drugs and Magic Remedies (Objectionable Advertisements) Act, No. 21 of 1954, India Code (1954).

5.5 Prohibited Content:

Certain advertisements are illegal in India:

i. Organs from humans

The Transplantation of (Human Organs and Tissues) Act of 1994 regulates the removal, preservation, and transplantation of human organs for therapeutic reasons, as well as the prohibition of human organ trading. This law prohibits any advertising that encourages anyone to provide, offer to supply, or pay for a human organ.¹¹

ii. Magical Treatments

The marketing of magical cures for diseases and disorders is prohibited under Section 3 of the Drugs and Magic cures (Objectionable marketing) Act of 1954. The Act defines "magic remedy" as any human or animal talisman, mantra, amulet, or other material that is thought to have magical qualities to treat, diagnose, prevent, or relieve sickness.

iii. Prenatal sex determination was made illegal in India in 1994, and the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act of 1994 prohibits the promotion of miraculous remedies for illnesses and disorders. According to the Indian Ministry of Health and Family Welfare, the Act aims to end sex-selective abortion, which "has its roots in India's long history of strong patriarchal influence in all spheres of life." Prenatal sex determination has caused the child sex ratio to fall at alarming rates in India, which is another reason that led to its ban. Instead of the formerly prevalent act of female feticide, there has been a substitution effect of more families participating in pre-natal sex determination throughout time.¹²

iv. Physicians

Doctors are not permitted to advertise their services in any medium or form of advertisement by any means under the Indian Medical Council (Professional Conduct, Etiquette, and Ethics) Regulations, 2002, issued under the Indian Medical Council Act, 1956, as it is unethical to apply directly or indirectly to patients, to a doctor, to a group of doctors, or to institutions or organizations. (A doctor is a physician who has earned an MBBS or MBBS certification as well as a postgraduate degree/diploma or comparable qualification in any medical discipline.)

¹¹ Transplantation of Human Organs and Tissues Act, No. 42 of 1994, India Code (1994).

¹² Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, No. 57 of 1994, India Code (1994).

v. *Diet and Health*

According to Section 24 of the Food Safety and Standards Act of 2006¹³, no advertising concerning the norm, quality, quantity, or grade composition, and no representation relating to the need for, or usefulness of, any food that is deceptive or deceiving, or that violates the provisions of this law or the rules and regulations contained therein, may be made.

vi. *Gaming (gambling, chance games; distinguish between private-sector and "state" lotteries)*

The Indian federal system clearly allows the states the authority to act on "gambling and betting" in the Indian Constitution. The Lotteries (Regulation) Act 1998, the Public Gambling Act 1867, and the Indian Penal Code 1860 all prohibit gambling in India. The Public Gambling Act of 1867 allows for simple competency games.¹⁴ In April 2011, the Information Technology Act of 2000 was also revised to prohibit websites for internet gambling and online betting. The Lotteries (Regulation) Act of 1998 empowers the state government to maintain lotteries under certain circumstances. Lottery advertising is criminal under section 294-A of the Indian Penal Code unless it is in accordance with the Lotteries (Regulation) Act, 1998.¹⁵

vii. *Religion*

Advertising based on religion or hurting religious sensibilities is prohibited by the Cable Television Networks (Regulation) Act, 1994, the Doordarshan and All India Radio Advertising Codes, and the Press Council of India's Norms of Journalist Conduct.

viii. *Securities*

The Securities and Exchange Board of India (Prohibition of Securities Market-related Fraudulent and Unfair Trade Practices) Regulations, 2003, promulgated under Section 30 of the Securities and Exchange Board of India Act, 1992, forbids fraudulent or unfair securities trading. Furthermore, those rules state that selling securities is a deceptive or unfair trading activity if it involves misleading advertising or contains misleading information that may influence investors' choices.¹⁶

ix. *Children's Ads (advertising during, shortly before, and after children's programs)*

Section 3 of the Young Persons (Harmful Publications) Act of 1956 prohibits advertising for any harmful publication, i.e. any publication that seeks to corrupt a young person (person under the age of 18) by causing or influencing him or her to commit crimes, acts

¹³ Food Safety and Standards Act, No. 34 of 2006, India Code (2006).

¹⁴ Public Gambling Act, No. 3 of 1867, India Code (1867).

¹⁵ Lotteries (Regulation) Act, No. 17 of 1998, India Code (1998).

¹⁶ Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, G.S.R. 341(E) (India).

of violence or cruelty, or in any other way. Advertisements directed to kids must not include anything, whether illustrated or not, that might cause physical, mental, or moral damage or abuse their vulnerability, according to the ASCI Code.

6. Landmark Judicial Pronouncements

6.1 Hamdard Dawakhana v. Union of India¹⁷

The case of Hamdard Dawakhana v. Union of India concerned the promotion of illegal narcotics and goods. In this instance, the petitioners were selling a product that purported to have self-medicating capabilities. They had difficulty promoting their goods because of concerns expressed against their marketing. In its decision, the Supreme Court held that an unpleasant advertising is not protected by Article 19(1)(a) of the Indian Constitution, which provides the right to free speech and expression. The court acknowledged that ads, as a form of commercial communication, serve two critical functions:

- a. Dissemination of product information: Advertisements are a way for the general public to learn about a certain product or service.
- b. Public benefit: It is in the public's best interests to have access to information through ads

The court also said that the public had a “right to receive” commercial communication. Article 19(1)(a) guarantees not just the freedom of expression and speech, but also the right of persons to listen to, read, and receive such communication. However, the court ruled that the marketing of illegal medicines is not covered by Article 19(1)(a). Advertising such products would be in violation of the right to free expression and expression since it is contrary to public interest and health concerns.

6.2 Mahesh Bhatt and anr v. Union of India.¹⁸

In the case of Mahesh Bhatt and anr v. Union of India, the constitutionality of several parts of the Cigarette and Other Tobacco Products Act, 2003 was challenged. The definition of “advertisement” under the Act, which included different types of visual representation and spoken statements employing light, sound, smoke, or gas, was one of the primary causes of disagreement.

¹⁷ Hamdard Dawakhana v. Union of India, (1960) 2 S.C.R. 671 (India).

¹⁸ Mahesh Bhatt v. Union of India, (2008) 8 S.C.C. 186 (India).

The court acknowledged that advertising is used to make announcements, enlighten the public, and disseminate information via media and other channels, with the goal of calling attention to particular information for the public or persons involved. Although tobacco intake or smoking is recognised as harmful, it was stated that ads for tobacco goods cannot be regarded fundamentally sinful. The term of “decency” encompasses a larger range of behaviours. If commercial ads are in the public interest, they are allowed limited protection under Article 19(1)(a) of the Constitution. Commercial advertising advocating tobacco goods, on the other hand, do not come within the scope of speech protected by Article 19(1)(a) of the Constitution. It was also emphasised that commercial marketing and news should be differentiated. News is intended to disseminate information, opinions, and ideas, while commercial commercials are intended to promote and stimulate the use of tobacco products. The dominating type and character of an article, photograph, or other media will indicate if it is a commercial advertising or a news item/picture.

6.3 Dabur India Pvt. Ltd. v. Colortek Meghalaya Pvt. Ltd.¹⁹

The Delhi High Court established the following guiding principles in this judgement while dealing with the problem of misleading advertisements:

- a. Advertisements are protected as commercial speech under Article 19(1)(a);
- b. An advertisement must not be false, misleading, or deceptive;
- c. There are certain cases where the advertisement must not be taken as false, but as a glorious representation of one’s own product; and
- d. Only when the impugned advertisement goes beyond glorifying its product, and is deceptive and misleading, does the protection under Article 19(1)(a) apply.

6.4 Ajay Gautam v. Amritsar Eye Clinic and Ors²⁰.

The National Consumer Disputes Redressal Commission (NCDRC) issued a major judgement regarding doctor advertising practises in the matter of Ajay Gautam v. Amritsar Eye Clinic and Ors. The NCDRC ruled that physicians cannot advertise any statements that might mislead patients into seeking treatment exclusively on the doctor's guarantee of total cure. The issue focused on Dr. Dinesh Sharma of Amritsar Eye Clinic in Dehradun, who promoted that his laser treatment could improve visual acuity, allowing patients to avoid wearing glasses. The

¹⁹ Dabur India Ltd. v. Colortek Meghalaya Pvt. Ltd., (2010) 170 D.L.T. 278 (Delhi H.C.) (India).

²⁰ Ajay Gautam v. Amritsar Eye Clinic, Consumer Case No. 316 of 2013, Nat’l Consumer Disputes Redressal Comm’n (India) (Apr. 9, 2015).

NCDRC determined that the doctor and the facility where the procedure was performed violated the Medical Council of India's (MCI) code of ethics and engaged in unfair trade practises by posting a false advertising. As a result, the doctor was fined Rs 1 100,000 for disseminating such misleading advertising.

7. Emerging trends & digital challenges

The digital transformation of the media landscape has fundamentally altered advertising paradigms, introducing new formats, delivery mechanisms, and associated legal complexities. The regulatory framework in India has responded with targeted updates to address these novel challenges.

7.1 Regulating Influencer Marketing: ASCI Guidelines

Recognizing the persuasive power of social media influencers, the Advertising Standards Council of India (ASCI) released its “Guidelines for Influencer Advertising in Digital Media” in May 2021, with significant clarifications issued in 2023.¹ These guidelines mandate that any promotional content must be explicitly disclosed using unambiguous labels such as ‘advertisement’, ‘ad’, ‘collaboration’, or ‘promotion’. The disclosure must be upfront, prominent, and in the same language as the promotional claim. This move aims to bridge the trust deficit by ensuring audiences can distinguish between organic and paid endorsements, directly applying the principles against misleading advertisements from the Consumer Protection Act to the digital sphere.

7.2 The Digital Media Ethics Code and Platform Accountability:

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules 2021) marked a pivotal shift by bringing digital news publishers and Over-The-Top (OTT) streaming platforms under a formal regulatory code.² While primarily focused on content, its ethics code intersects with advertising by imposing a general duty on publishers to not transmit misleading information. More significantly, it enhances the due diligence obligations of ‘significant social media intermediaries’ (platforms with large user bases) to prevent the proliferation of prohibited advertisements, creating a shared liability framework between advertisers, influencers, and platforms.²¹

²¹ Information Technology (Intermediary Guidelines & Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E) (India).

7.3 Virtual Advertising, Deepfakes, and Algorithmic Transparency:

The rise of synthetic media, including deepfake technology and AI-generated virtual influencers, presents unprecedented regulatory challenges. Advertisements can now feature hyper-realistic endorsements from individuals who never consented or used the product.³ Current law, under provisions prohibiting false endorsements in the Consumer Protection Act, may be applicable, but enforcement is complicated by technological anonymity and cross-jurisdictional hosting. Concurrently, the opaque nature of algorithmic ad-targeting raises concerns about discriminatory practices, consumer manipulation, and data privacy, issues that the newly enacted Digital Personal Data Protection Act, 2023 will begin to address.⁴

7.4 Sustainability Claims and “Greenwashing”:

As environmental consciousness grows, advertisements increasingly highlight Environmental, Social, and Governance (ESG) credentials. This has led to a surge in “greenwashing”—making vague, unsubstantiated, or exaggerated claims about a product’s environmental benefits.⁵ ASCI and the Central Consumer Protection Authority (CCPA) have shown increased vigilance, requiring that all absolute or comparative green claims be backed by credible scientific evidence, with specific data disclosed in the advertisement itself or via an accessible link.

7.5 Advertising in Online Gaming and Fantasy Sports

The explosive growth of the online real-money gaming sector has created a regulatory grey area. While traditional gambling advertisements are prohibited, advertisements for ‘skill-based’ fantasy sports and gaming platforms have proliferated. The Ministry of Information and Broadcasting issued an advisory in 2022 urging media platforms to avoid advertising offshore online betting platforms.⁶ This area remains contentious, with ongoing legal debates about classification and calls for a consolidated central law to replace the patchwork of state regulations.

8. Conclusion

The examination of India’s corporate advertising regulatory framework reveals a system in dynamic transition. The foundational pillars—ensuring truthfulness, preventing consumer harm, upholding public decency, and maintaining fair competition—remain firmly rooted in legislation and reinforced by judicial precedent. However, the migration of advertising to digital and social interactive platforms has necessitated an evolution from a primarily broadcast-era, one-to-many regulatory model to a more nuanced, participatory, and

technology-sensitive approach.

The contemporary landscape is characterized by a hybrid co-regulatory model. Statutory bodies like the CCPA establish the legal baseline with punitive powers, while self-regulatory organizations like ASCI provide agile, industry-specific guidance on emerging formats like influencer marketing and green claims. This synergy is crucial for maintaining relevance in a fast-paced environment. Yet, significant challenges loom. The governance of AI-generated and algorithmically-amplified content tests the limits of current disclosure and substantiation rules. The persuasive, personalized nature of digital advertising demands a reevaluation of concepts like ‘vulnerability’ beyond just children to include digitally naive consumers of all ages.

To future-proof the advertising ecosystem, the following steps are recommended:

1. **Legislative Harmonization:** Integrate advertising-specific provisions scattered across the IT Act, Consumer Protection Act, and DPDP Act into a more coherent digital communication law.
2. **Enhanced Platform Liability:** Clarify and strengthen the ‘duty of care’ for digital intermediaries to proactively deploy tools to identify and flag violating advertisements, particularly those involving deepfakes or harmful products.
3. **Investor in Regulatory Capacity:** Build specialized digital forensics and monitoring capabilities within the CCPA and ASCI to effectively police a fragmented online space.
4. **Promote Media Literacy:** Launch public awareness campaigns to educate consumers on identifying advertising disclosures, questioning exaggerated claims, and understanding data-driven ad targeting.

In conclusion, the integrity of the advertising marketplace is a cornerstone of a healthy digital economy and informed citizenry. As corporate persuasive techniques grow more sophisticated and embedded, the legal and ethical boundaries must demonstrate equal sophistication, ensuring they protect without stifling innovation, and guide without censoring legitimate commercial speech. The journey ahead is not merely about regulating ads, but about safeguarding the informational environment in which consumers make countless daily decisions.