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# **MISLEADING ADVERTISEMENT PRACTICES IN INDIA: A STUDY WITH REFERENCE TO CONSUMER PROTECTION ACT, 2019**

Authored by - Dr. Apeksha Chaudhary

## **ABSTRACT**

Consumer is the backbone of market. Consumer has all the rights to know everything about the product. In today's world advertisement has great impact of the individual's life. Same time Company's also has right to do the advertisement of their products for increasing the sale of product. But when an advertisement represent any product falsely, its effect the rights of the consumer A large number of duplicate items were began for the trade with low prices in markets as a result , the consumer falls into the dilemma, to figure out the actual product. This makes the life of manufacturer easier to earn profits by selling duplicate goods to the consumer. **Advertisement** is called deception when it misleads people, turning it into it also affects the conduct of the purchase. The **advertisement** is either false or **misleading** when it is false either using **misleading** statements in advertising.

So this paper explains the Economic Analysis, legislations that prohibit misleading advertisements, the role of Indian Judiciary, few issues of advertisement and suggestions to cope-up these issues.

**Keyword:** misleading advertisement, Consumer rights, manufacturer, product.

## **INTRODUCTION:**

Advertisement is a very popular medium to share the information about product and service to the public .Purpose of advertisement is to launch and aware the public about the product and service. A manufacturer or a seller needs to inform consumers about the nature, quality, characteristics of a particular product or a service provided or offered by them in the market

by the way of advertisement. An advertisement is termed to be misleading when it misleads the consumer by misrepresenting their products or services and by making false statements regarding it. Advertisements, via both print and digital methods, act as a powerful medium for promotion of a product, brand or service. The main objective of an advertisement is to inform the target consumers of the products and services being offered, convince them into believing that their facilities are finer than the rest and maintaining awareness about their products/ services in the minds of the prospective customers. The advertisements should thus enable a person to make well informed purchase decisions.

The term “False” means “deceive,” “contrary to facts” and the term “misleading” which is wider than “false” means capable of leading into error. No plausible jurisprudence is developed in India in relation to misleading advertisements. False or misleading advertisement once viewed has a life of its own. Once a false or deceptive advertisement has been successful in creating an image among the masses there will be residual effects of the unlawful advertising which will continue to influence the consumer's decision whether to purchase it even after the unlawful advertising itself has been discontinued<sup>1</sup>. For example- if a toothpaste company influences consumers that this toothpaste will get the white teeth within one month of use wash then such statements are false and misleading ones.

*Any advertisement or promotion through Television, Radio, or any other electronic media, Newspapers, Banners, Posters, Handbills, wall-writing etc. to misrepresent the nature, characteristics, qualities or geographic origin of goods, services or commercial activities so as to mislead the consumer could be broadly defined as a misleading advertisement<sup>2</sup>.*

**Section 2(28) of the Consumer Protection Act, 2019-** “misleading advertisement” in relation to any product or service, means 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

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<sup>1</sup> Farooq Ahmad, False and Misleading Advertisements -Legal Perspectives, Journal of the Indian Law Institute , Vol. 38, No. 2 (APRILJUNE 1996), Page No. 180.

<sup>2</sup> <https://consumeraffairs.nic.in/en/more/misleading-advertisements>

- (iv) deliberately conceals important information.

Advertising Standards Council of India (ASCI) ensures that advertising follows the four basic codes of ethics during advertising:

- **Honesty:** ASCI is always looking to ensure that the claims being made in an ad are true and honest.
- **Decency:** To ensure that advertising is not offensive to generally accepted norms of public decency.
- **Non-Harmful:** To safeguard against advertising situations or products regarded as harmful or hazardous to society to an unacceptable degree.
- **Fair Competition:** Any mal-practice is not required for ads because its derogatory towards the competition.

## ARTICLE 19(1) (a) AND ADVERTISEMENTS IN INDIA:

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. First time in India, In case of *Hamdard Dawakhana v. Union of India*<sup>3</sup> the major issue was whether the advertisement is a vehicle by means of speech guaranteed under Art. 19 (1) and restrictions imposed thereon by covered by Article 19 (2)<sup>4</sup>. The honorable Supreme Court of India give his verdict on commercial speech and said “*An advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. It assumes the attributes and elements of the activity under Art. 19(a) which It seeks to aid by bringing it to the notice of public. When it takes the form of commercial advertisement which has element of trade or commerce it. No longer falls within the concept of freedom of speech, for the object is Not the propagation of ideas, social, political or economic or furtherance of literature or human thought, but the commendation of the efficacy, and importance of certain good*”.<sup>5</sup>

Consumer Protection Act, 2019 is an exception to the rule of caveat emptor and protects the consumer’s right from misrepresentation or false statements or misleading advertisements.

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<sup>3</sup> A.I.R. 1960 SC 551

<sup>4</sup> M.P. Jain, Constitutional Law—Arts. 19(1) (a), (f) and (g)—Delegation of legislative power advertisements—*Hamdard Dawakhana v. Union of India*, Journal of the Indian Law Institute , Vol. 38, No. 2 (APRILJUNE 1996), Page No. 565

<sup>5</sup> A.I.R. 1960 SC 563

In *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd*<sup>6</sup> wherein the Supreme Court observed the right of the consumer as a recipient of commercial speech 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. Article 19(1)(a) not only guarantees freedom of speech and expression, it also protects the rights of individuals to listen, read and receive the said speech.”* Further, the Supreme Court held that misleading and deceptive advertising would not fall within the protection of Article 19 (1) (a).

In *Indian Express Newspaper v. Union of India*<sup>7</sup> that the Supreme Court held that commercial speech is protected under the ambit of free speech and expression under Article 19 and the Supreme Court observed that *“We are of the view that all commercial advertisements cannot be denied the protection of Article 19(1)(a) of the Constitution merely because they are issued by businessmen and its true character is detected by the object for the promotion of which it is employed.”*

## **Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022**

By using the power of Section 18 of Consumer Protection Act, 2019, the Central Consumer Protection Authority issue the guidelines for the prevention of false and misleading advertisement and making endorsements as follows-

Condition for a valid advertisement:

- includes truthful and honest representations;
- does not mislead consumers by exaggerating the accuracy, scientific validity or practical usefulness or capability or performance or service of the goods or product;
- does not provide/offer as a distinctive feature any rights conferred on consumers by any law;
- does not suggest any false claims about the advertisement being universally acceptable if there is a significant division of informed or scientific opinion pertaining to such claims;

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<sup>6</sup> 1995 SCC (5) 139

<sup>7</sup> (1985) 2 S.C.R. 287

- does not mislead the consumer about the risk to its personal security or that of their family in case they fail to purchase the advertised goods/product/service;
- complies with the provisions contained in any other sector specific law and the rules and regulations made thereunder.

## Guidelines on disclaimer

The disclaimers shown in an advertisement shall not contradict the material claim made in the advertisement or the main message conveyed by the advertiser and should not attempt to hide or conceal a material information which if provided is likely to make the advertisement deceptive or conceal its commercial intent. The Guidelines also mention certain requirements to be fulfilled by a disclaimer such as the following:

- the font used in a disclaimer shall be the same as that used in the claim;
- the disclaimer shall be at a prominent and visible place on the packaging;
- in case claim is presented as voice over, the disclaimer shall be displayed in sync with the voice over and at the same speed as that of original claim made in the advertisement.

**Children targeted Advertisements:** An advertisement that addresses or targets or uses children shall not –

- (a) condone, encourage, inspire or unreasonably emulate behaviour that could be dangerous for children;
- (b) take advantage of children's inexperience, credulity or sense of loyalty;
- (c) exaggerate the features of goods, product or service in such manner as to lead children to have unrealistic expectations of such goods, product or service;
- (d) condone or encourage practices that are detrimental to children's physical health or mental wellbeing;
- (e) imply that children are likely to be ridiculed or made to feel inferior to others or become less popular or disloyal if they do not purchase or make use of such goods, product or service;
- (f) include a direct exhortation to children to purchase any goods, product or service or to persuade their parents, guardians or other persons to purchase such goods, product or service for them;

- (g) use qualifiers such as 'just' or 'only' to make the price of goods, product or service seem less expensive where such advertisement includes additional cost or charge;
- (h) feature children for advertisements prohibited by any law for the time being in force, including tobacco or alcohol-based products;
- (i) feature personalities from the field of sports, music or cinema for products which under any law
- (j) requires a health warning for such advertisement or cannot be purchased by children;
- (k) make it difficult for children to judge the size, characteristics and performance of advertised products and to distinguish between real life situations and fantasy;
- (l) exaggerate what is attainable by an ordinary child using the product being marketed;
- (m) exploit children's susceptibility to charitable appeals and shall explain the extent to which their participation will help in any charity-linked promotions;
- (n) resort to promotions that require a purchase to participate and include a direct exhortation to make a purchase addressed to or targeted at children;
- (o) claim that consumption of a product advertised shall have an effect on enhancing intelligence or physical ability or bring exceptional recognition without any valid substantiation or adequate scientific evidence; claim any health or nutritional claims or benefits without being adequately and scientifically substantiated by a recognized body;
- (p) be published in any mass media, including advertisement on network games in respect of medical services, drugs, dietary supplements, medical instruments, cosmetic products, liquor or cosmetic surgery which are adverse to the physical and mental health of children

Dabur India v. Colortek Meghalaya Pvt. Ltd<sup>8</sup>. wherein the Delhi High Court laid down the following guiding principles while dealing with the issue of misleading advertisements:

- Advertisements are protected under Article 19(1)(a) as commercial speech;
- An advertisement must not be false, misleading or deceptive;
- However, there are certain cases where the advertisement must not be taken as false, but as a glorious representation of one's own product; and

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<sup>8</sup> 2010 (1) AD (Del) 14

- Only when the impugned advertisement goes beyond glorifying its product, and is deceptive and misleading, the protection under Article 19(1)(a) would not be available.

In **Francis Vadakkan v. The Proprietor, A- One Medicals & ors.** (2021) Kerala District Commission said, the defendant is a manufacturer of a hair growth cream where it had published an advertisement where it claimed that with the use of their hair cream, the hair will grow 3 folds in 6 weeks. The complainant before the commission said that he was influenced by such advertisements and purchased the cream twice from A-one Medicals. He used it for 7 weeks, but his hair didn't grow. So he approached the district Commission claiming Rs. 500,000 for loss, injury and mental agony.

The Commission found that the complainant was influenced by the advertisement to purchase the cream and used it according to the directions shown in the advertisement, but didn't get the outcome which was guaranteed through advertisement. Therefore The Commission found a deficiency in the service and directed the defendant to compensate the complainant

## **Punishment for Misleading Advertisement under Consumer Protection Act, 2019**

When central Authority is satisfied after investigation that any trader, manufacture, or endorser or publisher has made a false and misleading advertisement which affect the rights of consumer, the authority can pass the order of discontinue and modify the advertisement as per the order<sup>9</sup>. Moreover, if the Central Authority is of the opinion that it is necessary to impose the penalty on the manufacturer, endorser, impose the penalty which may extend to ten lakh rupees. Central Authority may for every subsequent contravention by the concerned person impose a penalty which may extend five year imprisonment and fifty lakh rupees fine<sup>10</sup>.

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<sup>9</sup> Section 89(1), Consumer Protection Act,

<sup>10</sup> Section 89(2), Consumer Protection Act,