

Advertising Industry in India: Comprehending the Legal Scenario

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Research Article

Abstract

In today's market, there is zealous competition that had led to exaggeration and misrepresentation of facts which ultimately affect sensitive minds. Now, this is the problem that the legal system seeks to address. Advertising is a powerful tool of communication. Whether we like it or not advertisements are everywhere because it reflects the need of the time. Advertising has such a strong persuasive power that it can easily create a lasting impact on the mind of the target audience. They make the consumer believe that the product that is being promoted or advertised for offers can satisfy their needs and better their living standard. In this paper, we will discuss the Indian advertising industry and its recent trends and developments.

Keywords: *Advertising, Standards, Communication, Marketing, ASCI*

1. Introduction

“Good advertising does not circulate information. It processes the public mind with desires and belief.”

- Leo Burnett

A famous saying by H.G. Wells is that ‘advertising is a legalized lying’². Advertising is a variety of topics at once. It is a cycle of correspondence, a social wonder, a desire to exercise the decision to choose, conviction on paper, and some more. In addition to energy, cars, data innovation and agriculture, it is a major organization and ranks among the world's largest companies. The growth of the advertisement industry is in direct association with the well-being of the economy of every country. The scale of the advertising industry is a symbol of the nation's way of life.

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² Advertising Laws in India: An Overview, LawTeacher, Aug. 2, 2019, available at: <https://www.lawteacher.net/free-law-essays/commercial-law/advertising-laws-in-india-law-essays.php> (Last visited on Oct. 30, 2020).

In the light of developments happening around the world in every field, the availability of new technology and media vehicles and the globalization of the advertisement industry has advanced to a more unmistakable degree in the desires of the middle class pay community. The race is to bring more, build and give more respect and keep consumers. Organizations ranging from general players to local community stores (kirana shops) to help market their goods and administrations are dynamically dependent on advertisements. With overall advertising budget growing 15 percent, India will be the snappiest emerging commercial market with these schedules, says Lindsay Pattison, Global Chief Executive of Maxus Media purchasing Company.³

Contemporary publicizing is overall an outcome of 20th century. Germany was the foremost country to have an advertisement printed on thee circulated sheet in a news leaflet in 1525. An English paper was the first to show a primary commercial in 1625. In 1704, America was the first to show a primary commercial. The primary advertising agency was *Volney B. Palmer*. The creator of the modern advertising agency is J. Walter Thompson. The first advertisement for⁴:

- a. In 1652, Coffee
- b. In 1657, Chocolate
- c. In 1658, Tea

In the period between World War II and mid-1950's, a majority of the advertising development was seen. At this point of time the advertising industry was running with the help of experts who were dealing with advancement, marketing and advertising⁵.

Some Salient Years in Indian Advertising History⁶ -

- a. Concrete commercial history began in the eighteenth century with clustered advertisements in Hickey's Bengal Gazette, India's first weekly newspaper, that seemed to be unparalleled for publishing.
- b. The studios mark the start of publicizing made in India (rather than importing in from England) Studios were instituted for intense sort, fancy text styles, and fancier, larger ads.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Id. at 23623.*

⁶ *Ibid.*

- c. Newspaper studios train the original of visualizers & artists.
- d. Big advertisers: dealers such as Spencer's, Army & Navy and White & Laidlaw.
- e. Marketing promotions: lists of dealers offered an early model.
- f. Advertisements in newspapers as categorization of the latest product since England.
- g. Licensed medicines: The chief brand as we presumably mindful of them presently was an order of advertisers.
- h. On June 5, 1883 Horlicks was the first to have the copyright of 'malted milk'.
- i. National Advertising Service Pvt. Ltd. was put up in Bombay in 1931.
- j. Indian Broadcasting Company was modified into All India Radio (AIR), in 1936.
- k. 1978 saw the beginning of television commercial.
- l. 1990 signs the commencement of another internet medium.
- m. Zee TV was the first Indian-satellite channel which started its broadcast in 1991.

A few nations have set down extensive laws that oversee and control advertising. In Europe, numerous nations have restricted home-grown advertising that targets youngsters under a specific age. The Advertisement Standards Authority in the United Kingdom sets the standards for advertising in a wide variety of channels, while all external advertising is completed with the approval of experts in the organisation of the local town. The Federal Trade Commission in the US is the most relevant and a definitive expert regarding the matter albeit nearby governments is permitted to authorize their own guidelines in this regard⁷.

India, like certain other countries, supports advertisement self-regulatory legislation because there is no universal rule code that manages all advertising highlights. The corporation has opposed the creation of a centralized advertisement code or a single controller. Self-regulation legislation applies to the standard and code that includes regulations for the advancement of moral and expert advice. These codes have been set somewhere around different specialists for example – "Advertising Standard Councils of India. (ASCI), Advertising Agencies Association of India (AAAI), Indian Newspaper Society (INS) Doordarshan which are adopted to guide Advertisers, Advertising Agencies, Public Sector, publication and Media"⁸.

Codes of the Advertising Standards Council of India (ASCI) has defined 'Advertisement' as: "Advertisement is a paid for Communication, addressed to the public on a section of it, the

⁷ Advertising Laws in India, Legal Desire, available at <https://legaldesire.com/advertising-laws-in-india/> (Last visited on Nov. 01, 2020).

⁸ *Ibid.*

purpose of which is to influence the options of behaviour of those to whom it is addressed.” Any communication which in the normal Course would be recognised as an advertisement by the general Public would be included in this definition even if it is carried free of charge for any reason. Section 2(a) of Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 defines ‘advertisement’ for the purpose of that Act only. Still, the definition is useful for inferring the Executive meaning of the term. The relevant portion of the definition is: Advertisement includes any notice, circular, label, wrapper, or other document and any announcement made. Thus, an advertisement is any document that announces or proclaims to the public the production, quality, availability or the like of something.”⁹

A street play or divider composition, a strict dialogue, a public gathering, a re-enactment, a presentation of a manikin, a *harikatha* or *burra katha*, or *oggukatha*, (a kind of social network in informal language) may be a type of correspondence mechanism that can convey an advertisement and thus an advertisement system. A glorified form of advertisement is marketing. A company manufacturer’s task strategy includes news conferences, which are an important promotional category. A press briefing either gives out details or advertisements, but never provides ‘news’. In this sense, the business theory of the dilemma of exposure measurement is sneaking suited as a dilemma of knowledge or insight. An insightful writer or a logical pursuer may be keen on knowing the concealed realities and dislike the data being given out by anyone including the assertion providers of question and answers session coordinator, or the individuals who address public gatherings. Such data is intentionally given to fill the needs of the supplier and not that of the collector. Strictly speaking, the material shared for the selling of an item, like a distribution thinking instalment, which is used to get certain advertisements, is publicity for print media and electronic media.¹⁰

The advertisements are a vital component, regardless of whether they are on TV, radio, newspaper or magazine, and may be expressed as the life and soul of the medium. It is difficult to load a newspaper or TV show with ads separately. It must be interposed or threaded into an imaginative or contemplating activity. Hinging upon the viewership or worthiness or readership of the program or paper, the expense of commercials changes. With the retrievals from commercial, the media endures as well as prospers¹¹.

⁹ Prof. V.C.Vivekanandan (ed.), *Media-Advertisement & Law* (NALSAR University of Law, Hyderabad).

¹⁰ *Ibid.*

¹¹ *Ibid.*

The history of the notion of advertising is traced in the book, “Advertising Law and Ethics” by Justice P K Bandhyopadhyay and P B Sawanth: “The simplest form of advertising was that of the street criers and the peddlers, who went about selling their wares. The pulpit, the platform, the street meetings and the village gatherings were the other modes of spreading the word. The peddler as well as the predictor resorted to it. One sold his wares, the other his views. Both had to persuade as large a number of people as possible to take-up what they had to offer and were always in need of appropriate means to attract maximum number of people. Therefore, it is true to say that advertising in its commercial sense was born when trade and industry became an organized activity, it was not unknown earlier.”¹²

2. Issues in Advertising

a. Deceptive Advertising – The primary point of advertising ought to be to impact or convince clients to purchase products/services that they promote, yet commonly these ads utilize bogus proclamations and furthermore distort their products which henceforth, disregard client options to realize what they are buying¹³. Companies found as blameworthy of bogus advertising are ¹⁴-

- i. Taco Bell prepared with beef: It was not generally prepared with beef however with oats filler. This deceived purchasers and they felt that it contains higher evaluation of meat.
- ii. Kashi: The Company asserted that their products are natural nonetheless they were made up of unnaturally processed ingredients and hence some of them were hazardous.
- iii. Splend: The advertisement says it is sugar but in actuality, it is made up of profoundly prepared synthetic mixes.

b. Misleading Prices- Companies often tend to hide the costs of products that are advertised to draw in countless purchasers. The costs they promote don't reveal the extra charges they charge on the particular product. In airlines, the portable networking business and membership clubs, these types of ads are most frequently found. The 'end-of-season-sales' is a common example of such misleading prices, the stage at which the costs of goods are destroyed to drive up offers.

¹² *Ibid.*

¹³ Available at: <https://iamrlawcollege.com/wp-content/uploads/2020/04/media-law-lect-8.docx>, (Last visited on Nov. 03, 2020).

¹⁴ False Advertising Examples, Your Dictionary, available at <https://examples.yourdictionary.com/false-advertising-examples.html>, (Last visited on Nov. 03, 2020).

c. Labelling Issues– Labels which we found on the products can also be misleading. At times they are represented or muddle the real weight of the packets or usually receive an alternate norm of estimation which is opposite to the by and large acknowledged norm. In comparison, the bundling of the products uses high sounding words such as “organic”, “eco-friendly”, “natural”, “mild” and so on without a valid clarification of the terms with respect to the products, although it has also been noted that such terms are often also used for products that have to do with those concepts.

d. Surrogate Advertising– It is a procedure utilized for advancing prohibited items like liquor or cigarettes on the lookout. Such restricted items are publicized in a roundabout way of veiled under another product. For example, Bagpiper utilizes Water, Soda and Music. It is an Indian brand and also a popular whisky brand in India. It promotes its products through its surrogate/substitute product Bagpiper Club Soda. Do you recall its appealing line “*khoob jamega rang*”?

e. Comparative Advertising- In simple terms it is known as comparing one product or service with the product or service of another gathering. In general, the other side is a candidate for the good or administration. On the basis of expense, efficiency, output, usability and so on, the correlation is made with the overall goal of increasing the deals by implying that the promotional commodity is of the equal or prevailing quality. It is to be noted that, these sorts of advertisement frequently lead to encroachment of brand names of the contenders according to the Trademarks Act, 1999 and it also promotes unfair competition. Eg, The advertisement of Pepsi for Coca Cola. Similar to each other, these brands cut some of their features in the advertisement. Making similar sounding names or packaging like GOLOFLAKE for GOLDFLAKE

f.

3. The “Advertising Standards Council of India (ASCI): Self-Regulation of Advertising”¹⁵

Setup in 1985, ASCI is an impromptu self-regulatory council. Its duty is to endorse sensible publicizing and to improve people’s faith in advertising.

¹⁵ India: Advertising and Marketing Advertising, Global Jurix – Advocates & Solicitors, available at: <http://www.globaljurix.com/our-publications/advertising-and-marketing-law-india.pdf>, (Last visited on Nov. 05, 2020).

3.1 Objectives of ASCI

The objectives of this council are¹⁶ :-

- a. To ensure the trustworthiness and authenticity of introductions and explanations made by the promotion.
- b. To ensure that the notices are not injurious.
- c. To protect people against the unfair use of advertising for the marketing of goods considered to be detrimental to society or individuals.
- d. To make sure that fairness is used by the advertisers in the competition.

3.2 Structure of ASCI

It consists of a Board of Governors and a Commission on Consumer Disputes. The Board of Governors consists of four fellows representing each of the four advertisements industry-related sectors¹⁷ :-

- a. Advertisers
- b. Advertising Agencies
- c. Media (owners of press, television, radio etc.)
- d. Related Sectors (outdoor agencies, PR, market researchers, advertisement producers, business schools.)

3.3. Laws and Regulations regulating Advertisements in India

Advertising has seen an enormous adaptation in India. From Doordarshan to the passage of ads by Prasar Bharti to new TV and media techniques, which nonetheless intensified violence, such as the promotion of banned goods, the promotion of limited drugs prompted the government to legislate several laws to keep advertising monitored.

4. Laws Governing Media

4.1 Press Council of India Act¹⁸

The Press Council is the watchdog of the press. It is a legal and semi legal body. It examines grievances against and by the press for infringement of the freedom of the press as well as it's

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ The Press Council of India Act, 1978 (Act 37 of 1978), available at: A1978__37.pdf (indiacode.nic.in) (Last visited on Dec. 18, 2020).

a breach of ethics. It is headed by a former judge of the Supreme Court of India as its Chairman. It also has 28 other members out of which 20 represent the press and are nominated by the organisation/news agencies which are well recognised and notified by the Press Council, 5 members are nominated from the two houses of the Parliament and 3 are nominated from the artistic, scholarly and legitimate fields as a nominee of the Sahitya Academy, University Grants Commission and Bar Council of India.

If there is a complaint against a newspaper it should be first of all taken to the editor or other representative who is working for the particular publication. If the complaint is not resolved here then it should be taken to the PCI within 2 months of the publication of the challenged news in case of dailies and weeklies and four months in all other cases and an original or a duplicate copy of the disputable clipping and also it must be translated in English (if the matter is in any other language) along with a copy of your letter written to the editor and also a copy of the letter which you received as a reply from the editor. On receiving such a complaint if PCI is prima facie convinced that the matter exposes ground for inquiry then, they issue a show-cause notice to the respondents and then its Inquiry Committee considers the matter on the basis of oral and written evidence placed before it. When inquiring, whether the PCI suspects that the respondents newspaper has breached the journalistic norms, it warns, admonishes or censures the newspaper or criticizes the actions of the reporter or the publisher as the case may be, bearing in mind the seriousness of the wrongdoing performed by the newspaper. It may also direct the respondent's newspaper to report in the upcoming issue a gist of the PCI's judgment.

4.2. Cable Television Network Rules, 1994¹⁹

Any advertisement code has been issued by the Cable Television Network Regulations, 1994, which states that advertising on the cable channel shall follow the country's laws and not violate people's morals, decency or religious feelings. This law makes ASCI obligatory for television and specifically forbids any form of commercial not to be displayed on cable networks that breaches the ASCI code. Advertising should not be allowed by the cable service by its audio-visual content, as per the rules. –

- i. Insult to any race, religion, station, ideology, shading, or patriot
- ii. Is against any arrangement of the Constitution of India

¹⁹ The Cable Television Networks Rules, 1994, *available at*: Microsoft Word - Cable Television Networks Rules, 1994 as amended _updated... (wipo.int) (Last visited on Dec. 18. 2020).

- iii. Through any way prompts people, in general, to perpetrate wrongdoing or cause problem or penetrate any law or praise brutality or obscenity in any capacity
- iv. Glorify Criminality
- v. Make utilization of the public insignia or the individual or character of a public chief.
- vi. No commercial will be allowed to show the disgusting picture of the ladies.
- vii. Encourage social indecencies, for example, endowment or kid marriage
- viii. Support legitimately or by inference the production, deal, or use of tobacco products, wine, liquor, nicotine, beer, or different intoxicants. Yet an object that uses the brand name or emblem of cigarettes, wine, tobacco, beer, alcohol or any other intoxicants may be marketed.
- ix. Support new born child milk items, taking care of jugs, or baby nourishments.
- x. Be totally or for the most part of a strict or political nature.
- xi. Contain any associations which hurt strict assessments
- xii. Shows kids in an undignified or revolting way, for example, asking or makes the impression of undesirable practices on their psyches.
- xiii. Promotes any item or administration which is flawed or poor as referenced in the Consumer Protection Act, 1986.
- xiv. The picture and the hear able matter of the promotion will not be exorbitantly 'boisterous'
- xv. Specifically refer that are likely to lead the general public to determine that the reported item or some of its accoutrements has any unique or amazing or super-common product or quality that is difficult to demonstrate.
- xvi. Advertisements ought not to meddle with the program i.e., it should be discernable from the program.
- xvii. No commercials should move close by the program i.e., it ought not to be appeared on the lower part of the screen or convey whatever other subtitles which are static or in a moving way.
- xviii. No program will convey ads surpassing 12 minutes of great importance, which may incorporate as long as 10 minutes out of each hour of business ads, and as long as two minutes out of every hour of a channel's self-limited time programs.

4.3. Code for Commercial Advertising on Doordarshan and All India Radio²⁰

The Doordarshan and All India Radio Advancement ('AIR') shall conform to the code approved by the Director-General for each Doordarshan and AIR. In addition, these codes were obligatory for the ASCI Code and prohibit any promotion involving the corresponding promotion in the same way.

- i. "Criticism of hopeful countries
- ii. Attack on religions or societies
- iii. Obscenity
- iv. Defamation
- v. Incitement to disorder or anything against upkeep of legitimacy.
- vi. Contempt of court
- vii. Hints against the uprightness of the president and legal executive
- viii. Anything imperiling the respectability of the nation
- ix. Criticism by name of any person"

4.4. Code of Conduct of the News Broadcasters Association²¹

The Association of News Broadcasters (NBA) represents private TV news and latest trends in India. At current, NBA has as its components 20 noticeable news and current developments networks (encapsulating 45 news and networks with recent developments). - The News Broadcasters Association (NBA) represents India's private TV news and latest events. NBA actually has as its components 20 significant news and latest developments networks (encapsulating 45 news and recent networks with developments):

- i. Representation of upheaval or poor treatment against women and children
- ii. Sex and exposure
- iii. Jeopardizing cross country security
- iv. Avoiding supporting or persuading thought and powerful nature.

²⁰ Code for Commercial Advertising on Doordarshan and All India Radio, *available at*: Revised Code for Commercial Advertising (story board).pdf (doordarshan.gov.in) (Last visited on Dec. 18. 2020).

²¹ Code of Conduct of the News Broadcasters Association, *available at*: code_of_ethics_english.pdf (nbanewdelhi.com) (Last visited on Dec. 18. 2020).

5. Laws Protecting Society and Consumers

5.1. The Consumer Protection Act, 2019²²

Section 6, pursuant to this Act, provides knowledge on the value, substance, adequacy, and so on of the right to secure unjustified trade and practice. Although section 2(1) (r) of the Act separates itself from the line exchange practice that covers the scope of false advertisement and phony allurements.

Section 14 arrangements with the conventions that the court furnishes to manage these unreasonable exchange practices and furthermore prepares to stop such sorts of commercials. The consumers can guarantee remuneration for any misfortune that has been caused to them through such unreasonable exchange practices.

The new Consumer Protection Act, 2019 came into power on twentieth July 2020 and it will enable consumers and help them in securing their privileges through its different advised standards and arrangements. The new act will be quick and less tedious contrasted with the more established Consumer Protection Act, 1986 in which single-guide access toward equity was given making it a tedious exercise.

The old Act accommodated a three-level consumer debate redressal hardware at the (National Consumer Disputes Redressal Commission), State and District levels.

Key highlights of the Consumer Protection Act, 2019

a. **Foundation of the Central Consumer Protection Authority (CCPA):**

- i) The CCPA retains the right to levy a penalty on the offenders and to issue demands for the inspection of products or the withdrawal of administrations, the cessation of unfair trade activities and the refund of costs incurred by customers.
- ii) To monitor and prosecute those crimes, the National Consumer Protection Authority will have an inspection wing. The CCPA will be in control of the director-general.

b. **Privileges of consumers:** The act gives 6 rights to the consumers;

- i) **Right to Safety:** It is right to be safe from goods and services which are dangerous to life and property. The goods which are not safe can cause serious injury to the consumer because of the defective ingredients, defective design or any other reason.

²² Consumer Protection Act, 2019 (Act 35 of 2019).

- ii) Right to information: It is a right of the consumer to be provided with all the details of the product i.e., its quality, consistency, virtue, power, expense, and standard of goods or administrations.
- iii) Right to choose: The right to choose can be made effective by providing access to variety of goods and services at competitive prices. The consumers must be provided with wide range of products and services that too at the lowest cost so as to make sure fair and effective competition in the market.
- iv) Right to represent: It is the right of the consumer to be heard at appropriate forums. Every consumer has a right to file complaint and be heard regarding it.
- v) Right to redressal: It is the right to be shielded from unjustifiable or prohibitive exchange practices.
- vi) Right to Education: It is a right to be educated about the practices that are prevalent in the market and the remedies which are available to them. The consumers can be informed by media, school curriculum, campaigns, cultural activities, etc.

c. **Disallowance and punishment for a deceptive commercial:**

- i) The National Consumer Security Authority (CCPA) will be entitled to levy penalties on the endorser or producer for 2 years in jail for misdirection or fake industrial imprisonment (Like Laxmi Dhan Warsha Yantra).
- ii) It is worth specifying that a rehashed offence will attract a fine of Rs 50 lakh and imprisonment of up to 5 years.

d. **Consumer Disputes Redressal Commission:**

- i) The act has the arrangement of the foundation of the Consumer Disputes Redressal Commissions (CDRCs) at the public, state, and regional levels.
- ii) The CDRCs will engage protests identified with;
- iii) Cheating or misleading charging
- iv) Out of line or prohibitive exchange practices
- v) Offer of risky merchandise and ventures which might be unsafe to live.
- vi) Offer of imperfect merchandise or administrations

The Act has defined the models of the Redressal Committee for Customer Disputes (CDRCs). Criticisms costing more than Rs. 10 crores will be heard at the National CDRC. The State CDRC will hear complaints, but not as many as Rs 10 crore, because the amount is

more than Rs 1 crore. Although the District CDRC will participate in complaints when the product or administration estimate is up to Rs 1 crore.

vii) The Emblems and Names (Prevention of Improper Use) Act, 1950²³- “This Act forbids any system or brand name or seal or name mentioned in the Schedule of the Act or any brilliant imitation with the true objective of commerce, calling or corporation from being used without the prior permission of the Central Government.”

viii) Young Persons (Harmful Publications) Act, 1956²⁴ -Any publication portraying stories of how to commit offences, demonstrations of unrest or cruelty or episodes of horrendous nature in such a way that it transmits a wrong message to the minds of the young person thus, encouraging them to commit such offences.

ix) Cable Television Networks (Regulation) Act, 1995²⁵ - Under this Act, Section 6 states that no entity can offer ads by link management unless the advertisement complies with the advertisement code. Under rule 7, it guarantees that the advertisement code does not disturb the integrity, deep substance and spiritual element of the person.

x) Indecent Representation of Women (Prohibition) Act, 1986²⁶ - Strictly forbids indecent representation of women such as showing figure of woman, her form, her body or any other part of her body in such a way that it is derogatory in nature or likely to injure the public morality of women.

xi) Standards of Weight and Measures Act, 1976²⁷ - This Act was passed to legislate exchange or business in freight, quantities, and other welfares which are sold or rationed by weight, measure, or number.

6. Industry- Specific Laws

6.1. Drugs and Cosmetics Act, 1940²⁸ - Rule 106 of this act is framed so that examines the illnesses which a medication will be unable to forestall or fix.

6.2. Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954²⁹ - “This act bans ads of some sort that deals with medicines and miracle remedies. As mentioned in

²³ The Emblems and Names (Prevention of Improper Use) Act, 1950, (Act 12 of 1950).

²⁴ Young Persons (Harmful Publications) Act, 1956, (Act 93 of 1956).

²⁵ Cable Television Networks (Regulation) Act, 1995, (Act 07 of 1995).

²⁶ Indecent Representation of Women (Prohibition) Act, 1986, (Act 74 of 1986).

²⁷ Standards of Weight and Measures Act, 1976, (Act 60 of 1976).

²⁸ Drugs and Cosmetics Act, 1940, (Act 23 of 1940).

Section 3 of the referenced demonstration, any person will not engage in any dissemination of any advertisement that promotes or drives the use of medications;

- a. For the acquisition of women's unnatural birth cycle and for forestalling female roots.
- b. For keeping up or improving the limit of people for sexual delight.
- c. For adjusting feminine issues in ladies

Section 5 of this act strictly forbids advertisements of those enchantment cures which are utilized for the treatment of specific illnesses or problems. It likewise expresses that on the off chance that any individual abuses this law, at that point the sponsors can be rebuffed for a half year or a fine or both.”

In the timeline of the act, 'AIDS/HIV was omitted.' But it was included in the schedule by the Union Ministry of Health following the Kerala High Court's order in 2002. The reality that triggered this move was they assured cure for AIDS against the manufacturer, selling and promotion of Ayurveda Drug Resistant QRIt prevented Mr Majid from creating "high and unfounded claims" about the drugs in response to community interest lawsuit brought in the Bombay High Court.

“In the case of *Hamdard Dawakhana v. Union of India* the Supreme Court confronted the inquiry with regards to whether the Drug and Magic Remedies Act, which put certain limitations on the advertisement of medications and furthermore precluded such promotions which indicated drugs having some magic characteristics to fix infections was substantial as it controlled the ability to speak freely and articulation of an individual by forcing certain limitations on advertisements. The Supreme Court held that there is no uncertainty that an advertisement is a type of discourse and articulation however only one out of every odd promotion is an issue to manage the outflow of thoughts and subsequently, business nature commercial doesn't fall inside the perspective on Article 19 (1)(a).”

6.3. Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994³⁰ - Advertising with respect to the pre-birth assurance of sex accessible in the inborn

²⁹ Askari, “Protection to Consumers, Legal Service India”, available at <http://www.legalservicesindia.com/article/1463/Legal-Protection-of-Consumers.html> (Last visited on Nov. 07, 2020).

³⁰ Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, (Act 57 of 1994).

directing focus, the lab is precluded under this demonstration. While section 3 of the youngster, forces punishments for promoting making unsafe distributions.

6.4. Prevention of Food Adulteration Act, 1954/ Food Safety and Standards Act, 2005³¹ - “Section 24 of this act states that,

a. Any commercial ought not to be made of any food all items which are deluding or misdirecting all negate the arrangements, rules, and guidelines of this Act,

b. Any individual will not entertain himself with any uncalled for methods for exchange practice only for the advancement of the brand for advancing the deal flexibly utilization being used of the articles of food or receive any unreasonable methods for commercials which can make hurt the buyers or make disarray in the brain of the customers, by making the bogus portrayal of the food articles or any such factor relating thereto;”

6.5 Prize Chits and Money Circulation Schemes (Banning) Act, 1978³² - “A prize chit is characterized as follows-Any understanding or approval under which an individual gathers monies via commitments or memberships or by the offer of units, declarations, or different instruments or in some other way or as enrolment expenses or affirmation charges or administration charges to or in regard of any investment funds, shared advantage, frugality, or some other plan or course of action by whatever name called, and uses the monies so gathered entomb alia for a predefined number of endorsers as dictated by part, draw, or in some other way, prizes or endowments in real money or in kind”.

6.6. Prize Competition Act, 1955³³ - “The Prize Competitions Act, 1955, in particular parts of India, it regulates and guides prize rivalries and denies the commercialization of unauthorized prize rivalries. Notice that the Foreign Direct Investment Policy of the Indian Government does not encourage unfamiliar involvement in “Lottery Business, including government/private lottery, online lotteries, betting a lot, including gambling clubs, etc.”

6.7. The Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 and Amendment Act, 2002³⁴ - In order to

³¹ Prevention of Food Adulteration Act, 1954/ Food Safety and Standards Act, 2005, (Act 37 of 1954).

³² Prize Chits and Money Circulation Schemes (Banning) Act, 1978, (Act 43 of 1978).

³³ Prize Competition Act, 1955, (Act 42 of 1995).

³⁴ The Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 and Amendment Act, 2002, (Act 41 of 1992).

protect breastfeeding, this act controls the development, supply, delivery and advertisement of infant milk substitutes, feeding bottles, and infant foods. The biggest justification for banning this campaign was that by their ads it created a powerful influence on people's minds and made them think that processed food was better for babies than the mother's milk itself. Every kind of commercial related to baby milk products has been forbidden by the government.

6.8. Transplantation of Human Organs Act, 1994³⁵ - For medicinal reasons and for the shirking of professional experiences with human organs, the Transplantation of Human Organs Act, 1994 includes the laws of ejection, preservation and transplantation of human organs. Hence, any advertising is banned by statute.

6.9. Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003³⁶ - Obviously, this act restricts ads/promotion of cigarettes and other tobacco products. Section 5 of this Act provides that no individual should be involved in the production, flexibility and dispersion of cigarettes or any other tobacco products and, accordingly, the marketing of such products that are dangerous and endanger the life of any individual. For all the arguments found in cigarette bundles that “Smoking is harmful to health” and “Tobacco can cause cancer,” any buyer can move for legal aid to the buyer courts.

6.10. Public Gambling Act, 1867³⁷ - “Our Indian Constitution unequivocally gives the states the rights to decree upon “gambling and betting”. This demonstration denies exercises of gambling in India. The Information Technology Act, 2000 was likewise revised in April 2011 to boycott Internet gambling and web-based betting websites.”

6.11. The Lotteries (Regulation) Act, 1998³⁸- The Lotteries (Regulation) Act, 1998 includes the ability for the state government involved to conduct lotteries according to the potential participants. Under section 294-A of the Indian Penal Code, lottery advertisements will be guilty unless it is pursuant to the Lotteries (Regulation) Act.

³⁵ Transplantation of Human Organs Act, 1994, (Act 42 of 1994).

³⁶ Indian Laws on Advertisement in General, Legal Desire, *available at* <https://legaldesire.com/indian-laws-on-advertisements-in-general/> (last visited on Nov. 07, 2020).

³⁷ Public Gambling Act, 1867, (Act 03 of 1867).

³⁸ The Lotteries (Regulation) Act, 1998, (Act 17 of 1998).

6.12. The Indian Penal Code and Criminality of Advertisement- Advertising identified with the offense, recruiting of an agreement executioner, or affecting savagery, psychological oppression is legitimate and culpable under the Indian Penal Code.

6.13. Doordarshan/All India Radio (AIR) Advertisement Code³⁹ - “Doordarshan and AIR, both are intensely inspired by Prasar Bharati (a legitimate self-governing body set up under the Prasar Bharati Act), follow a comprehensive code for business promotions which control the substance and nature of advertisements that can be moved over the workplaces.”

The regulatory authorities listed below have the authority to control advertisements in their respective regions.

6.14. Insurance Regulatory Development Authority, 2000- This regulatory body creates demanding requirements and rules that not only restrict the scope of the advertising produced by the intermediate individuals but also the enforcement with them. In specific, it also centralizes the power to promote the issuing of such healing steps by arranging the notifications in such a manner as to initiate the major promotions.

6.15. Telecom Regulatory Authority of India- This administrative body, commonly known as the Telecom Regulatory Authority of India, was created by an Act of Parliament in 1997. The duty of this body is to guarantee appropriate insurance to the telecom clients and simultaneously support the conditions needed for the development of media transmission, link administrations and broadcasting administrations in a way and clear a stage which will assist India with assuming a main part in the arising worldwide data society. TRAI has additionally asked Telecom Commercial Communication Customer Preference Regulations, 2010 to limit the developing danger in order to direct spontaneous business calls and messages (UCC).

6.16. Securities and Exchange Board of India- Assists with ensuring revenue of the investors in securities. It additionally advances, create and control the securities market.

6.17. Reserve Bank of India- RBI is supposed to be the guard dog of the money related framework. It goes about as an administrator and regulator for the cases identified with

³⁹ *Supra* Note 20.

deluding promotions. It controls its capacity to restrict misleading advertisement by the method of budgetary foundations. It likewise hastens the ability to deny the issue of the outline and furthermore requesting the commercial organizations.

6.18. Medical Council of India -To direct issues pertaining with the expert lead, decorum and morals for enrolled clinical professionals

In the case of *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd (MTNL)*⁴⁰, the Supreme Court held that there is no doubt that 'commercial advertisement' is a part of Article 19 (1)(a) as it aimed at the communication of information regarding the product. Moreover, the Court concluded by saying that the government can regulate commercial advertisements which are unfair, deceptive, untruthful and misleading.

In the case of *Bennett Coleman Co. and Ors v. Union of India (1972)*⁴¹, it questioned the limits of the 1995 Import Control Order on the manufacture of newsprint. Accordingly, the Supreme Court held that the constitutional right of shareholders as people is not violated when they enter a corporation.

In *Havells v. Amritanshu Kaitan (2015)*⁴², In order to be a truthful commercial, the court ruled that advertising comparing a product with comparable competing products would match all its characteristics.

In 2018, Heinz was slapped with a fine of \$2.25 mn for deluding publicizing claims-Heinz has been hit with \$2.25 million in punishments by the Federal Court of Australia for making misdirecting promoting claims about the idea of its Little Kids Shredz items.

In June 2016, the Australian Competition and Consumer Commission (ACCC) initially made a motion against HJ Heinz Corporation Australia, alleging that the FMCG had made deluded well-being statements that its Little Kids Shredz drugs were useful for 1-3 years of maturity of small children. This, be that as it may, was not the case, with about 66 percent of sugar in the product.

In March 2018, it was affirmed by the Federal Court that Heinz had broken Australian Consumer Law by making such cases. The ACCC had at first looked for a \$10 million

⁴⁰ *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd (MTNL)*, 1995 AIR 2438, 1995 SCC (5) 139.

⁴¹ *Bennett Coleman Co. and Ors v. Union of India*, 1973 AIR 106, 1973 SCR (2) 757.

⁴² *Havells v. Amritanshu Kaitan*, CS(OS) 107/2015.

punishment. On 24 August, the courts requested Heinz to take care of punishments adding up to \$2.5 million, just as build up a consumer law consistence program and pay the ACCC's expenses.

The ACCC said it's cautiously thinking about the judgment, with a seat, Rod Sims, saying the guard dog was quick to guarantee punishments for breaks of the consumer law are "sufficiently enormous to get the consideration of monetary business sectors, sheets, and senior administration".

"The Heinz Group is one of the biggest food organizations on the planet. We will keep on supporting for more grounded punishments to dissuade enormous organizations from participating in genuine negotiations of Australia's consumer laws, especially since Parliament has passed enactment significantly expanding the most extreme punishments for breaks of the ACL" Sims said in a proclamation.

7. Advertising Standards Council of India and Banning of Advertisements

ASCI are the watchdog of the advertising sector. It has received complaints against 200 misleading advertisements which include complaint against Hindustan Unilever Ltd, Hindustan Petroleum, and Dabur India.

a. When an item is promoted or advertised by a celebrity it increases its demand which automatically increases its sales volume the main reason for these high sales of the product is because of the influence of the celebrities. Even the consumers are aware that they are doing it just for marketing and in reality, they might not be using the product. For Instance, Shahrukh Khan promotes a fairness cream, Madhuri Dixit feeds instant noodles and call it a solid tidbit causes a client to trust in that particular product.

b. A lawsuit against Red Bull, an Australian drink firm, was lodged by a customer called Beganin Caraethes. He also said he did not find any athletic abilities in himself as the motto of the item indicates "Red Bull gives you wings" as he was a normal consumer of this product for 10 years.

c. In 2014, L'Oréal Paris cosmetic brand had to admit that its L'Oréal Paris Youth Code skincare formula was not scientifically proven to improve genes or offer a recognizable youthful look and was prohibited from making such statements without any logical facts regarding their products.

d. A complaint was filed against Hindustan Unilever Ltd (HUL) for its soap products. An advertisement was released by saying that its Ayush cleanser depended upon 5000 years old Ayurveda sacred texts made up of 15 Ayurveda herbs.

8. Conclusion

At present we have various guidelines that ceaselessly screen the showcase of vulgar and misdirecting advertisings in India. In the present boisterous schedule we purchasers don't give a lot of consideration to the ad and in this manner goes unnoticed by the legal bodies to uphold the guidelines. The requirement for an hour comes at whatever point an ad disregards public certainty then it is the obligation of the Regulators to make a prompt move as quickly as time permits. The Broadcasting Bill, 2007 was relied upon to acquire a significant change in the working of Advertisements. Currently, there is a vital need for a Uniform Regulatory framework to guide trade and, preferably, the organisation of the Country will quickly perceive the plea for such a formalization of promotion rules.

Different laws relating to ad when all is said in done and those identifying with explicit areas create utter turmoil in the psyches of the maker/specialist organization just as the customers. In comparison, none of the existing regulations directly discuss the concerns of internet promotions. The inability of a solitary legal regulatory entity to exist further irritates the situation. It is highly appealing to have a full law/guideline on ads in all forms of media that can have lucidity in the topic and go through as a one-stop window on all advertising-identifying problems.

References

Advertising Laws in India: An Overview, LawTeacher, Aug. 2, 2019, *available at*: <https://www.lawteacher.net/free-law-essays/commercial-law/advertising-laws-in-india-law-essays.php> (Last visited on Oct. 30, 2020).

Advertising Laws in India, Legal Desire, *available at* <https://legaldesire.com/advertising-laws-in-india/> (Last visited on Nov. 01, 2020).

Prof. V.C.Vivekanandan (ed.), *Media-Advertisement & Law* (NALSAR University of Law, Hyderabad).

Available at: <https://iamrlawcollege.com/wp-content/uploads/2020/04/media-law-lect-8.docx>, (Last visited on Nov. 03, 2020).

False Advertising Examples, Your Dictionary, *available at* <https://examples.yourdictionary.com/false-advertising-examples.html>, (Last visited on Nov. 03, 2020)

India: Advertising and Marketing Advertising, Global Jurix – Advocates & Solicitors, *available at*: <http://www.globaljurix.com/our-publications/advertising-and-marketing-law-india.pdf>, (Last visited on Nov. 05, 2020).

The Press Council of India Act, 1978 (Act 37 of 1978), *available at*: A1978__37.pdf (indiacode.nic.in) (Last visited on Dec. 18, 2020).

The Cable Television Networks Rules, 1994, *available at*: Microsoft Word - Cable Television Networks Rules, 1994 as amended _updated... (wipo.int) (Last visited on Dec. 18, 2020).

Code for Commercial Advertising on Doordarshan and All India Radio, *available at*: Revised Code for Commercial Advertising (story board).pdf (doordarshan.gov.in) (Last visited on Dec. 18, 2020).

Code of Conduct of the News Broadcasters Association, *available at*: code_of_ethics_english.pdf (nbanewdelhi.com) (Last visited on Dec. 18, 2020).

Consumer Protection Act, 2019 (Act 35 of 2019).

The Emblems and Names (Prevention of Improper Use) Act, 1950, (Act 12 of 1950)

Young Persons (Harmful Publications) Act, 1956, (Act 93 of 1956).

Cable Television Networks (Regulation) Act, 1995, (Act 07 of 1995).

Indecent Representation of Women (Prohibition) Act, 1986, (Act 74 of 1986).

Standards of Weight and Measures Act, 1976, (Act 60 of 1976).

Drugs and Cosmetics Act, 1940, (Act 23 of 1940).

Askari, “Protection to Consumers, Legal Service India”, *available at* <http://www.legalservicesindia.com/article/1463/Legal-Protection-of-Consumers.html> (Last visited on Nov. 07, 2020).

Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, (Act 57 of 1994).

Prevention of Food Adulteration Act, 1954/ Food Safety and Standards Act, 2005, (Act 37 of 1954).

Prize Chits and Money Circulation Schemes (Banning) Act, 1978, (Act 43 of 1978).

Prize Competition Act, 1955, (Act 42 of 1955).

Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 and Amendment Act, 2002, (Act 41 of 1992).

Transplantation of Human Organs Act, 1994, (Act 42 of 1994).

Indian Laws on Advertisement in General, Legal Desire, *available at* <https://legaldesire.com/indian-laws-on-advertisements-in-general/> (last visited on Nov. 07, 2020).

Public Gambling Act, 1867, (Act 03 of 1867).

Lotteries (Regulation) Act, 1998, (Act 17 of 1998).