

A PREVALENCE STUDY OF DELUSIVE ADVERTISEMENTS IN INDIA AND ITS REGULATION

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ABSTRACT

Did drinking Horlicks make you taller and sharper? Is this true or were you sold a lie? In times of rising competition in the world of business, most companies have resorted to advertisement campaigns aimed at luring consumers to buy their products. There is an increased use of advertisements to market products and increase purchasing power of the consumers worldwide. However, the strategy is used at the expense of the consumers through propagation of misleading information. Although adverts are free to be creative with their advertisements, they must not exceed the boundaries of fairness. Food advertisements in India are under the control of FSSAI and Advertising Standards Council of India ASCI. Section 24 of FSS Act, 2006 strictly prohibits the use of deceiving claims for promotion and sale of products and is a punishable offence. Under Section 10 of the Consumer Protection Act, 2019, the Central Government has the power to deal with complaints related to misleading advertisements and false claims. The FSSAI has put many products under its radar over misleading claims and have begun prosecution proceedings in more than 100 cases under the FSS Act. In order to protect consumer interest, the government should establish more stringent laws and be a watchdog in regulating misleading advertisements. There is also a rising need of educating the consumers about the advertisements, their standards and legislations. Consumers and their organizations must exercise their rights against dishonest advertising and bring such cases to the notice of the enforcement groups.

Keywords – Consumers, Delusive, FSSAI, food advertisement, Regulation, deceptive, false.

INTRODUCTION

Did drinking Complan make you taller? Did using fairness creams make you 10 times fairer? Is one drink better than another? They say the consumer is King, but is the king being fooled? Were all of us sold a dangerous lie?

After globalization, India is rapidly embracing consumerism. In times of rising competition in the world of business, most companies have resorted to advertisement campaigns aimed at luring consumers to buy their products. To promote any product or service creative advertisements are shown to the audience to grab their attention. It is extremely exhausting to read the features of any and every item. However, a commercial display makes it a lot easier. In 30 seconds, an effective advertisement not only showcases its feature but also influences the mind of customers to purchase it over that of its competitors. However, the strategy is used at the expense of the consumers through propagation of misleading information. This malpractice is regarded as displaying Misleading Advertisement.

These misleading advertisements have an adverse impact on the customers. False and misleading advertisements in fact violate several basic rights of consumers such as the right to information, the right to choose, the right to be protected against unsafe goods and services as well as unfair trade practices. Hence, a check on misleading advertisement becomes imperative. Advertisements have a very strong psychological impact on the viewers. Even if a person is not in a need of a product, advertisements create an urge in him/her to buy the product. Although adverts are free to be creative with their advertisements, they must not exceed the specified boundaries.

This paper discusses in detail the prevailing trend of misleading advertisements in India and the authorities regulating such deceptive advertisements.

MISLEADING ADVERTISEMENTS

“misleading advertisements” are defined under the Consumer Protection Act, 2019, as, “*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 (iv) deliberately conceals important information.”ⁱ

Therefore, it is important to note that an advertisement becomes a misleading advertisement when there is an element of deception to it. When any advertisement is endorsed by stating untruthful and dishonest claims about the product in order to persuade the consumers into buying the product, it becomes misleading.

IMPACT OF FALSE AND MISLEADING ADVERTISEMENTS ON THE CONSUMERS

Misleading advertisements can be categorised into two groups. In the first group would be those that basically violate consumers’ right to information and right to choose and thereby have the potential to cause the consumer, financial loss and in many cases even mental agony. The second category would include those that promise health cures and drugs of questionable efficacy without any scientific backing. This class of advertisements is the most dangerous, as they can also have a severe repercussion on the health and safety of the consumer.ⁱⁱ

Violates Right to Information

The labels of majority of the products are lengthy and the adverts use numerous fancy words in place of universally known ingredients to trick the consumers. Because the advertisements are short, easy to understand and appealing, consumers are easily lured into buying those products. Advertisers of complexion enhancing creams, miracle weight loss drinks, anti-dandruff shampoos, and manufacturers of memory and height boosting drinks for children are usually guilty of making exaggerated product claims thereby depriving the consumers of their right to information.

The National Consumer Disputes Redressal Commission has in many cases warned against advertisements that use fine print to hide crucial information pertaining to products and services, thereby misleading the consumer. And by awarding substantial compensation to the consumer, who was misled by such an advertisement, the National Commission made it clear

that it would not take such violations of consumers' right to information lightly. Its advice to manufacturers and service providers: "advertisements should not mislead and should give a clear picture of the quality of the goods sold" ⁱⁱⁱ

Violates Consumers' Right to Choose

When material facts which are likely to influence buying decisions are not disclosed the advertisement becomes deceptive. In several advertisements it is stated that 'conditions apply' but these conditions are not stated. Not disclosing material facts amounts to deception. For example: Lipton green tea claims quick weight loss to its consumers if consumed on regular basis. However, there is a small asterisk which mentions conditions apply. The adverts are aware that the consumers are most likely to ignore the asterisk and hence take advantage of the same.

Violates Consumers' Right to Safety

This class of advertisements is the most dangerous, as they can also have a severe repercussion on the health and safety of the consumer. *In Consumer Education and Research Society V. Godrej Soaps*. hair dye manufacturing advertisement marketed by Godrej Soaps alleged that a consumer could be assured of the quality of the product and were totally safe. But the Results showed that the agent used in the manufacturing of the product caused tumour because of the carcinogenic agent inside it. This created a misleading impression on the consumers and therefore, direction has been issued to the company to delete and drop the word totally safe, from the advertisement.

In Dabur India v. Colortek Meghalaya Pvt. Ltd., ^{iv} the Delhi High Court laid down the following guiding principles while dealing with the issue if 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 glorious representation of one's own product; and
- 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

Similarly, *In Nadiya v. Proprietor, Fathima Hospital & Others*^v, which was brought before the Kerala State Consumer Disputes Redressal Commission, it was alleged by the complainant that tempted by an advertisement, which claimed to increase a person's height, Nadiya, a Class VIII student got admitted to Fathima Hospital for surgery in 1996 for increasing her height. The surgery was conducted, but to her dismay Nadiya found her left leg shorter by ½ inches, and therefore she could not walk. By September 1996, the pain had increased and the complainant was bed-ridden till March, 1998. The Commission held the hospital and the doctors negligent, deficient in their service and guilty for the advertisement and directed them to pay Rs 5,00,000 to the complainant.

LAWS RELATING TO FALSE AND MISLEADING ADVERTISEMENTS IN INDIA

The Food Safety and Standard Authority of India (FSSAI) is responsible for protecting and promoting public health through the regulation and supervision of food safety. Food advertisements in our country are under the administrative control of the FSSAI and Advertising Standards Council of India (ASCI). The Section 24 of FSSA clearly states that no advertisement shall be made of any food which is misleading or deceiving and no person shall engage himself in any unfair trade practice for purpose of promoting sale, supply, use and consumption of articles of food or adopt any unfair or deceptive practice including the practice of making any statement, whether orally or in writing or by visible representation. No advertisement shall give the public any guarantee of the efficacy that is not based on an adequate or scientific justification thereof.^{vi}

Advertising Standards Council of India, a voluntary self-regulation council, registered under Section 25 of the Indian Constitution Act (ACSI 2007) is a non-profit company. ASCI works in the interest of the consumers as well as the manufacturer's. The ASCI has recently signed an agreement with FSSAI to safeguard the consumers from misleading claims in food and beverage advertisements. As per the agreement, ASCI will identify advertisements which prima facie violates provisions of Food Safety and Standards Regulations, 2018 and the FSSAI would further investigate the same.^{vii}

Section 53 of The Food Safety and Standards Act, 2006 prescribes the penalty for misleading advertisement and states:

- (1) Any person who publishes, or is a party to the publication of an advertisement, which-
- (a) falsely describes any food; or
 - (b) is likely to mislead as to the nature or substance or quality of any food or gives false guarantee, shall be liable to a penalty which may extend to ten lakh rupees. ^{viii}

RECENT BRANDS PROSECUTED BY FSSAI

The FSSAI has put many products under its radar over the misleading claims and has begun prosecution proceedings in 19 cases under the Food Safety and Standards (FSS) Act. Below is the summary of cases of violation of section 24 of FSS ACT, 2006 & FSS (Packaging and labelling) regulation, 2011 ^{ix, x}

- 1) Complan: The claim on the advertisement of the product that one can grow two times after taking Complan is misleading and violates Section 24 of FSS Act, 2006.
- 2) Complan memory: The declaration, viz: (i) Complan with Memory chargers (ii) 5 Brain chargers (iii) helps to improve memory, are misleading and violate Section 24 of FSS Act, 2006.
- 3) Boost: The claim that 'Boost provides 3 times more stamina than sadharan chocolate drink' is misleading and violates Section 24 of FSS Act, 2006. The producer has not submitted any specific study on this product to substantiate the claims.
- 4) Horlicks: The advertisement claims that after taking Horlicks, children become 'taller, stronger, sharper' which is deceptive in nature. It violates Section 24 of FSS Act, 2006.
- 5) Emami - healthy and tasty soyabean oil: The label contains a logo/picture in which it is written '7 stage European refining technology, 'Suraksha Shakti' which are violating Clause 2.3.1.5. of FSS (Packing and Labelling) regulations, 2011.

- 6) Saffola: The use of heart symbol and the claim 'the heart of a healthy family' Saffola encourages you and your family to take care of your heart by using less oil and low saturated fat diet, and 'use of word losorb technology' etc; on the advertisement are misleading in nature.
- 7) Engine mustard oil: Claims like 'health and vigour' and 'cholesterol 0 g' on the advertisement are misleading.
- 8) Nutricharge men: The claims like "Enhance your energy, stamina and immunity with smart nutrition. Smart nutrition means nutricharge. Powered by 10 vitamins, 11 minerals, 11 antioxidants and 3 amino acids. Heart and brain health" are misleading and deceptive in nature.
- 9) Kellogs special K: The claim that "research shows that people, who eat low fat breakfast like Kellogg's Special K, tend to be slimmer than those who don't" is misleading and deceptive in nature.
- 10) Britannia nutrigo biscuits: The claims on advertisements like: No added sugar, complex carbohydrates, diabetic friendly are misleading commercial violates Section 24 of FSS Act, 2006.
- 11) Kellogs extra museli: The label of the said product appeared as if it contains a number of fruits. This type of labels is misleading, which gives an idea that the said product contains so many fruits.
- 12) Bournvita little champs: The producer has claimed presence of DHA in their product and its benefits which are not proved. This is deceptive in nature.
- 13) Today premium tea: The claims by the producer shows the following which is misleading as per Section 24 of FSS Act, 2006: 100% natural. Rich in antioxidants.
- 14) Pediasure: The claim on the product label and advertisement is 'Helps in child's growth and development' which is misleading as per Section 24 of FSS Act, 2006 and FSS (Packaging and labelling) regulation, 2011.

15) Real active fibre: Advertisements of the said product shows the following which are misleading: Snack healthy, manages weight and keeps you fit, keeps digestive system healthy, maintains heart health.

16) Nutrilite: Claims “Each tablet supplies 13 vitamins, 11 minerals and phyto factors plant compound from nutrilite’s exclusive plant concentrate are misleading and deceptive in nature.

17) Kissan cream spread: Advertisement shows the claim that ‘Kissan creamy spread contains 3 times more essential nutrients than sadharan butter’, which is misleading.

18) Rajdhani besan: Newspaper advertisement has a heart logo which are misleading as per Section 24 of FSS Act, 2006.

19) Britannia vita Marie: Claims like heart friendly, helps reduce cholesterol, is misleading as per section 24 of FSS Act, 2006.

In all the above cases it was found that the health value of a product in advertisements and on the label were different. Food Safety and Standards Act (FSSA) states that any nutrition value by visual, written, as well as orally has to be backed by scientific data.

In a recent Johnson & Johnson baby talc controversy, Johnson & Johnson said that it would discontinue its talc-based baby powder globally. This move comes after thousands of lawsuits were filed against the company by several women who claimed that the talcum-based baby powder contained asbestos and many of them developed several health issues including ovarian cancer.^{xi}

Similarly, a case was filed against Baba Ramdev’s Patanjali Ayurveda in 2012 by the District Food Safety Department after samples of mustard oil, salt, pineapple jam, besan and honey produced by Patanjali Ayurveda had failed quality tests at Rudrapur laboratory. The products were found to be in violation of sections 52-53 of Food Security norms and section 23.1 (5) of Food safety and Standard (packaging and labelling) regulation.^{xii}

CONCLUSION AND SUGGESTIONS

The analysis made in this article sheds light on misleading advertisements and the constant effort by the authorities to curb them. This brings out the necessity for regulating the advertisements more stringently. As for advertisements that are found to be misleading, corrective advertisements at the cost of advertiser who inculcates deceptive advertisements should be taken. Before the advertisement is made public, it should be thoroughly examined in order to avoid misleading contents in it. Furthermore, the importance of improving awareness among the consumers cannot be undermined. While considering false advertisements it is pertinent to remember the principle of 'Caveat Emptor' which means that the buyer should be aware regarding the goods purchased. Empowered consumers can play great role in curbing misleading advertisements. Law students and interested individuals can play an important role in spreading the awareness through workshops, legal literacy programs and seminars. Awareness advertisements on television and print media will also play a vital role in curbing the impact of misleading advertisement on the consumers. At the same time, it is a responsibility on the part of the manufacturers to honestly and fairly advertise their products and gain trust of the consumers in return. Consumers and their organizations must exercise their rights against dishonest businessmen indulging in such a practice and bring such cases to the notice of the enforcement groups.

ENDNOTES

ⁱ The Consumer Protection Act, 2019, Sec 2(28), NO. 35, Acts of Parliament, 2019.

ⁱⁱ Cherian, G., 2022. *Study on the Status of Law Enforcement for Misleading Advertisements in India and its Impact on Consumers*. [online] Cuts-cart.org. Available at: https://cuts-cart.org/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf [Accessed 30 August 2022].

ⁱⁱⁱ Girimaji, P., 2022. *Misleading advertisements and Consumer*. [online] Consumeraffairs.nic.in. Available at: https://consumeraffairs.nic.in/sites/default/files/file-uploads/misleading-advertisements/misleading_advertisment_and_consumer%20%28%29_0.pdf [Accessed 30 August 2022].

^{iv} Dabur India v. Colortek Meghalaya Pvt. Ltd, 2010 (42) PTC 88 (Del)

^v Nadiya v. Proprietor, Fathima Hospital & Others, 2001 (3) CPJ 572 (Ker. SCDRC) 582 (India)

^{vi} The Food Safety and Standards Act, 2006, Sec 24, No. 34, Acts of Parliament, 2006.

^{vii} Fssai.gov.in. 2022. *FSSAI*. [online] Available at: <https://fssai.gov.in/cms/advertising-standards-council-of-india-asci.php> [Accessed 30 August 2022].

^{viii} The Food Safety and Standards Act, 2006, Sec 53, No. 34, Acts of Parliament, 2006.

^{ix} Ritu Bhatia. Food regulator begins prosecution on leading products (India). 2012 Nov 11 [cited 2013 Jan 1]

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^x Priyanka Rastogi. Magic Drugs and Misleading Advertisements. Food, Drugs, Healthcare and Life Sciences (India). 2012 Dec 3 [cited 2012 Dec 31] Available from: <http://www.mondaq.com>

^{xi} Malviya, S. and RAJAGOPAL, D., 2022. *Johnson & Johnson: Controversies hurt Johnson & Johnson's sales in India*. [online] The Economic Times.

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^{xii} The Economic Times. 2022. *fema cases registered against yoga guru ramdev: Latest News & Videos, Photos about fema cases registered against yoga guru ramdev | The Economic Times - Page 1*. [online]

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