

MISLEADING ADVERTISEMENTS

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ABSTRACT: Advertising has both positive and negative impact on consumers thought processes and purchasing decisions. Misleading and false advertising not only leads to increased negative impact on the health of the consumer, but also causes influence on social behavior of the consumer. Significant numbers of the advertisements are directed towards children and the youth. The impact of misleading advertisements is very grave especially on children and young minds. The awareness of ASCI guidelines is very limited and has not proved to be very fruitful to curb misleading advertisements. In the recent past, a huge number of objectionable advertisements have been published in various newspapers and magazines about alleged cures for venereal diseases, stimulants and conditions peculiar to men and women. Innocent people get into the trap of false belief because of lack and not only end up losing large sums of money but also suffering immense harm and injury to the body. Individuals involved in promoting such activities can be a real threat to society if they remain unattended and deserve severe restriction and punishment. This paper aims to study the effect of misleading advertisements, misleading information or stereotyping advertising on customer purchase intention.

Key Words: :

INRODUCTION

Everyone is a consumer¹. The subject of the welfare of the consumer is one of extended authentic intrigue. For somewhere around seven hundred years the hands of power- church, organization, or State has assumed a job in managing the issues of the market, with the point of helping the consumer. Be that as it may, the traditional free market monetary hypothesis supported by Adam Smith² pushed that the business sectors are themselves proficient and disparaged the model of "opportunity of agreement". This convention propound that buyer and firms should uninhibitedly investigate their choices through arrangement that prompts offer, acknowledgment lastly restricting contract when there is a "meeting of the brains". Where one party to the agreement is a buyer and the other a seller, the contracting consumer looks to boost his utility by cleverly settling on the best decisions for himself that are accessible, and the contracting provider tries to amplify his benefits by offering to sell his item at the best cost. In this model, the law applies similarly to all parties to the agreement, and each is similarly "ensured" by the law and the legitimate framework.

In this fast expanding consumer market protection of consumer interests in an equitable manner is a significant question. India has a long history of consumer protection, dating back to the 'Vedic' period. But specifically after Indian independence the Constitution aimed at a fundamental change to the existing scenario of consumer interests. But due to the prevailing social and economic inequality in the Indian society these constitutional mandates were largely frustrated. To deal with the milieu of India consumers and fulfilling its commitments to secure consumer rights, the Parliament of India enacted the Consumer

¹ The term 'consumer' is generally understood as anyone who buys any goods or avails any service for his/her use for consideration. It is however to be noted that any technical definition of the term will also include any user of such goods and services with the permission of the buyer. Therefore the term includes a very broad category or group who buys or consumes any good or service for him/her self, as well the beneficiaries.

² Adam Smith propounded this theory in his classic "Wealth of Nations" which remains a precursor to the modern academic discipline of economics. In this he expounded upon how rational self-interest and competition can lead to economic prosperity. These ideas reflect the concept that each person, by looking out for him or herself, inadvertently helps to create the best outcome for all.

Protection Act in 1986. The Consumer Protection Act in association with its allied legislations³ was expected to consolidate and strengthen the Indian legal framework of consumer protection and securing consumer rights effectively. Consumer Protection Act aimed to - promote and protect the basic rights of the consumer's e.g. right to safety, choice, information; establish consumer protection council for enhancing the consumer awareness, participation in decision making process, and consumer education; provide a mechanism for speedy and simple redressal to consumer disputes; and to control and regulate unfair and anti-competitive trade practices.

Advertising is an age-old business practice for informing and persuading consumers about their products. In order to advance the supply or transfer of goods or services, immovable property, rights and obligations of the manufacturer or supplier in connection with its product or services, advertising is understood as a form of representation made in connection with trade, business, craft or profession. Advertising can be in any form of material⁴ including any advertisement included or planned for instant retransmission by the licensed service. It is part and parcel of the strategy of commercial marketing. Commercial advertisement most commonly desire to drive consumer behavior to its commercial offering and increased consumption of its product. However if an advertiser uses a false statement about the product; or, intended to mislead through its presentation; or, intended to deceive or likely to deceive the consumers to whom it is addressed; or, convey to the potential promises which are exaggerate about the efficacy of their product to such an extent that the products cannot deliver; or, they intend to actively conceal the ill effects of their products. Where such falsity or deception impairs the economic behavior of consumers or causes injury in regard to ' false or misleading advertising.'⁵ This form of advertising, in all likelihood, persuades consumers in commercial transactions which they may avoid; affect their right to informed choice, the right to know the quality, quantity, purity and safety of the product or service of what they are doing. There is no effective correction of this information asymmetry through existing legal and regulatory institutions and the ' market failure ' perpetuates an irreparable injury to consumer welfare and consumer rights.

False and misleading advertising is a means of causing asymmetry in information. They are unethical and have to be addressed as a social and commercial ill. These advertisements infringe fundamental consumer rights such as the right to informed choice, security and protection from unfair and anti-competitive trade practices. They also have unintended and unwanted market effects and impair competitiveness. By affecting the economic behavior of the consumer through deceptive representation, the economic waste of consumer rights is permanently impaired. In connection with drugs and food items, this form of advertising causes a significant and detrimental impact on consumer health. The implicit messages contained in such advertisements also contribute to the psyche and good sense of the consumer being assaulted. But the fact remains that this issue in India continues to a serious extent.

In Indian Consumer Protection Act⁶ in conjunction with several other laws⁷ attempted to define the limits of permissible commercial advertising and to regulate false and misleading bits and pieces advertising. In addition, the Indian Advertising Standards Council (ASCI), a voluntary non-profit organization, also governs

³ According to Section 3 of the Consumer Protection Act it will not be derogating or replacing any other existing legislation dealing with this subject. Section 3 state that “...*The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.*” The other legislation are regarded as allied or consumer friendly legislation and compliment and its provisions compliment with the Consumer Protection Act.

⁴ Newspaper, magazines, television commercial, radio, outdoor advertisement, internet, direct mail, door-to-door campaign etc

⁵ This definition is attempted by digesting various definition on false and misleading advertisement including the components of false and misleading advertisements as included within the definition of “unfair trade practice” under the Consumer Protection Act, 1986.

⁶ As provided section 14 (1) (hc) and it states, “*to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement*”.

⁷ Food Safety and Standards Act,2006; The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce Production, Supply and Distribution) Act, 2003; Drugs and Cosmetics Act, 1940; Drugs and Magic Remedies(Objectionable Advertisements) Act, 1955; Indecent Representation of Women (Prohibition) Act,1986; The Lotteries (Regulation) Act,1998; Securities and Exchange Board of India Guidelines for Advertisement by Mutual Funds, 1996; Competition Act,2002; Insurance Regulatory and Development Authority Act, 1999.

and regulates the same without any legal enforcement of its orders. But in India, these legislative and voluntary efforts were largely futile. Consumer Affairs Ministry, Government of India issued a statement in 2011 expressing its concern over this issue and stating that "the ever-increasing role of misleading advertising has assumed threatening proportions, particularly in view of the growing purchasing capacity of Indian consumers and the unleashed blitzkrieg of media activity."⁸

Defining the key terms used for the purpose of this article:

The main purpose of this research is to examine the problem of false and misleading advertising in India; its impact on consumer rights; the effectiveness of the Indian legal framework to regulate the same and finally recommend a blueprint for regulation to ensure that advertising is 'honest and non-deceptive' without unreasonably curbing the 'right to advertise' yet addressed commercial enterprises. In the research study, there are some important terms that are used. Therefore, these terms must be defined as used in this research study in the context. The definition of key terms is as follows:

- a. Consumer rights: basic consumer rights as an integral part of international law and policy, and the creation of an obligation for all United Nations member states to enforce the same in their domestic jurisdiction. These fundamental rights include a) the right of access to products that are not hazardous; b). Promoting and protecting consumers ' economic interests; c). Access to adequate information for consumers to make informed choices; d). Education for consumers; e). Freedom to form an association of consumers; f). Access to effective redress mechanism for grievances and g). Promoting sustainable patterns of consumption.
- b. Right to be informed: every consumer's right to have factually accurate and reliable information that provides knowledge of products, services, laws or anything related to consumer buying and using things in everyday life. The scope of this right to include access to reliable, independent and accurate information on all aspects of a product or service to ensure that informed and independent decisions are taken by consumers.
- c. Commercial Advertising: it is an encapsulated communication about a product or service designed in clear and concise terms that gives an appealing message to attract target consumers. The representation is in audio or visual advertising and the pronunciation can be made through any light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or other material.
- d. Right to advertise: a right of business to advertise and is recognized as a form of speech protected by Article 19(1)(a) of the Constitution. Subject a can be restricted to such a right. Reasons referred to in Article 19(1)(2); or (b). While ' legal,' but more or less' harmful' may be judged; or c). It is misleading and false.'
- e. False and misleading advertising: a form of advertising that conveys a false impression or there is a significant chance that confusion is caused or that information is misleading and not just an abstract risk to a reasonable person viewing the advertisement. Falsity or confusion can be either in the advertisement's literal and implied meanings. Whether the advertisement has caused any harm or injury to consumers is not necessary. Misleading Advertising include exaggerating and overstating, expressing unrealistic attributes of the product, use of professional concepts for more effect, fake license, false warranties, use of cinematic tricks and misleading images, discounts and gifts. Misleading advertisements causes viewers to misunderstand or make incorrect decisions e.g. **Kent Veg Purifier**, False advertisement are those which are inconsistent with facts e.g. **Maggi Oats Noodles and** Objectionable advertisement shows unsafe or dangerous acts, obscene visuals. Advertisements of products banned from advertising e.g. alcohol, cigarettes also fall under this category for example *Patanjali's Putrajeevak Vati*. Type of different sources of advertisements you can complain about are Print ad & inserts, Posters, hoarding, banners, Brochures, leaflets, e-mails, advertisement on TV, Radio, Cinemas, advertisement on Internet, website or social media and advertisements on SMS

⁸ Letter of Mr. Pankaj Agarawala, Additional Secretary, Ministry of Consumer Affairs, Food, And Public Distribution, Govt. of India, Dated: November 14, 2011, D.O. No. 2(13)/2003-CPU (Vol-II)

Examples and instances of misleading advertising include:

The promise to cure horrible diseases such as cancer and AIDS while the Drugs and Magic Remedies Act states that no medical practitioner should claim cure for such diseases as specified in section 3 of the schedule.

A medical practitioner advertising his clinic and claiming he offered a definite cure for epilepsy; in this case, the Indian Medical Association (IMA) declared him to be a fraud based on the committee's findings that he gave his patients lethal drugs at high doses. After a complaint from a consumer, the Indian Advertising Standards Council (ASCI) held that advertising violated the Drugs and Magic Remedies Act. Yet the practitioner continued to advertise and the departments for drug control failed to act, leading to thousands of consumers falling into false advertisements.

In another case, a young girl, having a short height, caught an ad that promises to convert a dwarf into tall, attracted wards and promised her that she would gain 10 cm through surgery in six months. The so-called surgery for correction left her in bed. India is the land of babas and sadhus spiritualists. There was no law specifically aimed at prosecuting those who make false spiritual claims and deceiving people.

False and misleading health cure advertisements can also be found on the World Wide Web in abundance. Among these websites were those promoting slimming and weight loss cures; all purpose pills that alleviated anything from arthritis, diabetes, hypertension, heart disease to kidney problems, tuberculosis, asthma and hepatitis; herbal products and magnetic devices that treated anything from headache and back injuries to insomnia, arthritis, and sprains.

LEGISLATIVE FRAMEWORK

Legislative framework available in India to curb misleading advertisements are Drug Controller General of India, Food Safety and Standards Authority of India, Ministry of Information and Broadcasting, Insurance Regulatory and Development Authority of India, Telecom Regulatory Authority of India, Advertising Standards Council of India (ASCI), Consumer Courts, GAMA portal (Grievance Against Misleading Advertisements).

MAGIC DRUGS AND REMEDIES ACT

Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, seeks to curtail undesirable drug advertisements and magic remedies as advertisements are considered to promote harmful drug self-medication. The Act lists the diseases and disorders for which advertising is prohibited (Drugs and Magic Remedies Act, 1954, Section 3 and Schedule). Section 3 of the Act states that no person shall participate in any advertisement that promotes a drug or leads to the use of a drug for a specific cure. Furthermore, Section 3 prohibits any advertising that promotes drugs for the diagnosis, cure, mitigation, treatment or prevention of any disease; disorder or conditions as set out in the schedule. Section 4 of the Act prohibits advertising related to a drug if the advertisement contains any matter that gives a false impression, directly or indirectly, of the true character of the drug or makes a false claim to the drug or is otherwise false or misleading. Section 5 of the Act prohibits magic remedy advertising to treat certain diseases and disorders. Any person who breaches Section 3 or Section 4 shall be punishable. On the first conviction, up to two years in prison, and up to 2,000 rupees in fine. In case of a second or subsequent conviction, imprisonment is ranging from six months to five years, and a fine ranging from ten thousand rupees to one lakh rupee.

AYUSH DRUGS

The advertising regulation of AYUSH products falls within the scope of the 1954 Drugs and Magic Remedies (Objectionable Advertisements) Act (the '1954 Act'), since the definition of 'drug' given in the Act covers all medicines, substances and articles other than food. In order to check the veracity and to monitor misleading advertisements, powers are conferred on State Governments to authorize Gazette Officers to search, seize, examine any record, register, document or other material object related to any objectionable advertisement pursuant to Section 8(1) of the 1954 Act.

In a written response to a query from Lok Sabha, the Minister of State for the Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy (AYUSH) stated that a growing number of misleading AYUSH product advertisements have been reported in recent years.⁹ Such complaints are also registered in the portal maintained by the Department of Consumer Affairs (DoCA) of the GAMA (Grievances against Misleading Advertising). Such complaints also appear on the GAMA (Grievances against Misleading Advertisements) portal maintained by the Consumer Affairs Department (DoCA). Over the period from April

⁹ <https://www.ascionline.org/images/pdf/au1336.pdf>

2015 to March 2018, approximately 809 complaints were received from AYUSH advertisements and herbal medicines / products. In the period from 20 January 2017 to 19 January 2018, 732 complaints were reported by the Advertising Standards Council of India (ASCI), with which the Ministry had signed a MoU for suo moto monitoring of AYUSH advertisements appearing in print and television media.¹⁰

ASCI GUIDELINES

The ASCI Code for Self - Regulation was drawn up by people in professions and industries involved in or related to advertising in consultation with representatives of people affected by advertising, and was accepted as basic guidelines by individuals, corporate bodies and associations involved in or otherwise concerned with advertising practice with the following:

A code for self-regulation in advertising has been adopted by the Advertising Standards Council of India (ASCI) established in 1985. It is a commitment to market-place honest advertising and fair competition. It stands for protecting the legitimate interests of consumers and all those involved in advertising-advertisers, media, advertising agencies and others who help in advertising creation or placement.

It was formulated various guidelines to be followed by the advertiser and it has various clauses for the advertisers, professionals, doctors, celebrities and any other such related person. It specified rules for disclaimers on the product, about its font, size of the font, language of the font, colour of the font etc, the ASCI code book has all the related rules and clauses incorporated in it related to misleading advertisements.

CASE LAW

METRO TYRES LTD. V. THE ADVERTISING STANDARDS COUNCIL OF INDIA & ANR.

BACKGROUND OF THE CASE

In a very interesting judgment issued earlier this month, the Delhi High Court ruled on the jurisdiction of the Indian Advertising Standards Council (ASCI) to adjudicate complaints concerning infringement of copyright in advertisements.

Holding that the existence of provisions pursuant to the Copyright Act, 1957 and the Trademark Act, 1999, authorizing the district court exclusively to adjudicate claims of infringement does not constitute an embargo on the ASCI adjudicating claims of infringement, the court based its judgment on the desirability of confiscating self - regulatory bodies with greater powers to enable them to adjudicate.

FACTS AND ISSUES

The plaintiff, Metro Tyres, is a two-wheelers and three-wheelers tyres and tubes manufacturer. It instituted the lawsuit to restrict defendant No. 2, MRF from making groundless threats against the complainant for copyright infringement with respect to the content of its media advertisements and thus imperiling its reputation and goodwill. Furthermore, the complainant asked the court to order the ASCI to adjudicate any proceedings that the MRF may institute in this regard.

In support of its contentions, the plaintiff advanced 3 main arguments.

First, the complainant argued that, in view of the fact that Section 62 of the Copyright Act and Section 134 of the Trademark Act exclusively empower district courts to adjudicate claims of infringement and dismissal, the ASCI is not competent to adjudicate such proceedings. This assertion, the plaintiff argued, is further reinforced by the fact that the ASCI lacks any powers to punish those who disregard its directions; it must refer these cases to the government for appropriate action.

Second, Rule 7(9) of the 1994 Cable Television Network Rules prohibits the broadcast of any advertising that is contrary to the advertising self-regulation behavior of the ASCI. Under the 1995 Cable Television (Regulation) Act, authorized officers such as sub divisional magistrates and district magistrates are responsible for handling complaints related to infringement of the Act and the Cable Television Rules. Since no court inferior to a district court is empowered to adjudicate such complaints under the Copyright Act and the Trademark Act, the complainant argued that Rule 7(9), which is the legal substratum on which the powers of the officials advertised above are based, is squarely affected by Section 62(1) of the Copyright Act and Section 134 of the Trademark Act.

Lastly, ASCI argued that it has jurisdiction to adjudicate on this matter, the complainant argued that in this case it lacks jurisdiction. This is because the complainant is not an ASCI member for the simple reason that ASCI cannot adjudicate on a dispute between a member and a non - member.

¹⁰ <http://pib.nic.in/PressReleaseDetail.aspx?PRID=1541936>

JUDGEMENT OF THE COURT

The Court began its analysis by noting that the vires of a rule can only be challenged before a division bench in accordance with the Delhi High Court roster, so that this prayer can not be adjudicated by the single judge adjudicating this matter, Justice Endlaw.

Subsequently, the complainant's claim based on Sections 62 and 134 was dealt with. Noting that the aforementioned provisions merely delineate the jurisdiction of courts that may adjudicate on infringement proceedings, the court held that proceedings before the ASCI are not in the nature of a proceedings. The court referred to Section 63 of the Copyright Act and Section 103 of the Trademark Act in connection with criminal infringement proceedings to support its holding. Noting that Sections 62 and 134 did not in any way affect the operation of these provisions, the court held that this made it abundantly clear that Sections 62 and 134 could not act as an embargo on claims operating in a completely different sphere to the ASCI. Recognizing that self-regulatory bodies can play a central role in curbing unnecessary litigation, the court cited several judgments in support of the suggestion that conditions should be created conducive to the development of self-regulatory bodies. Ergo, argued that the complainant could not be allowed to scuttle the MRF's proceedings before the ASCI. Insofar as the complainant's argument that the ASCI cannot adjudicate on a case involving a non-member is concerned, the court held that the fact that the complainant is conducting an activity governed by the ASCI code viz. Advertising, coupled with the fact that ASCI members are the advertising agency and the television channels through which its advertising is broadcast, would be sufficient to make it suitable for the jurisdiction of ASCI.

COMMENTS

While I do not dispute the finding of the court that the Copyright Act and the Trademark Act provide for the granting of other remedies beyond those provided for in Section 62 and Section 134, I would respectfully submit that this cannot be the sole basis for the court to conclude that the ASCI is competent to adjudicate the complaint of MRF. More specifically, I would argue that there are 3 serious flaws in the judgment of the court. First of all, it is interesting to note in paragraph 10 of the judgment that Justice Endlaw takes note of its own judgment in Procter and Gamble vs. Hindustan Uniliver, in which it was held that the ASCI is not on the same footing as a court, since it cannot grant the relief that can be granted by a civil court and can only complement, not usurp, the authority of other courts and tribunals. He also takes note of a Century Plywoods vs. ASCI Bombay High Court judgment in which it was held that the ASCI could not arrogate the powers of a court to itself or issue directions to non-members. However, he does not explain how his holding in this case can be squared with his holding in the case of Procter and Gamble and simply says he disagrees with the view of the Bombay High Court because of his line of reasoning in his judgment.

This brings me to my second point on the line of reasoning behind the conclusion of the Court. Justice Endlaw, instead of putting forward cogent reasons in support of the suggestion that the legislative command legally embedded in Section 62 of the Copyright Act and Section 134 of the Trademark Act is not flouted or undermined by his judgment in this case, focuses on the normative desirability of giving greater powers to self-regulatory bodies. The tenuous reasoning adopted by him is best epitomized by the fact that, in Subramanian Swamy versus Union of India, he refers to the judgment of the Supreme Court, to the extent that it exposes the importance of brotherhood, which is not even remotely relevant in the present case. While the other judgments he cites deal with self-regulatory bodies and mechanisms, those judgments do not lay down any principles that directly support his conclusion and some of them were delivered in entirely different contexts, such as the need for a mechanism for self-regulation in the legal profession.

Finally, the plaintiff's argument about the ASCI's power to pass a verdict against a non-member was completely misconstrued by Justice Endlaw. As I understand it, the plaintiff's argument was that the ASCI, being a company established under Section 25 of the 1956 Act, cannot pass orders against third parties over whom it has no control. Further, if one party is its member and one is not in a disputed matter, legitimate concerns may also be raised about its objectivity and impartiality.

Instead of addressing these apprehensions, Justice Endlaw focuses on how, even against non - members, the orders of the ASCI can be fully implemented.

For the above reasons, I would argue that a division bench should reconsider the judgment on a shaky legal basis.

LACUNAS IN THE LAW

However, in the present scenario the law is somewhat out modeled and outdated. While it prohibits misleading health claims in the print media; it has no provision to tackle the advertisements that may appear on the television or the internet. That there has not been a law specifically to prosecute those who

makes false spiritual claims and deceive people. As such there is an immediate need for not only to formulate a strict law but also of a strict vigil on the various claims made by unscrupulous practitioners about their claims for curing different ailments and to punish the defaulters accordingly. There is a urgent need for a National Code, ASCI code has many gaps – It is required to be more industry friendly, there are no provisions for corrective advertisement. There is urgent need for punitive action, Pre-vetting, reimbursement, ASCI code not in vernacular languages and hence it is important to make an appeal to IIPA to draft a National Advertising Code for better advertising laws and uniformity in laws related to misleading advertisements.

We need remedies to prohibit advertising by Drug & Magic Remedies

Therefore, in advertising there is a need for self-regulation, the Indian Advertising Standards Council (ASCI) should adopt a Code for Self Regulation to ensure that advertising should be such that there is no violation of the self-regulation code.

In order to prevent them from being deceived by such advertisements, it is necessary to identify the spots where consumers need to be cautioned. This could be done in bus, metro or railway platforms through advertising.

Disciplinary action must be taken against physicians advertising their services or those involved in advertising to promote a particular medicine, vitamin or drug.

Through advertising, people should avoid self-medication. Unless prescribed by a certified medical practitioner, a medicine that promises to relieve from ailments such as joint pain etc. should not be believed. A member committee, which may include drug controllers from different states, doctors and representatives of the pharmaceutical association, should be structured to strengthen the DMR Act.

In addition to amending legislation, the government should set up a sovereign system to monitor law enforcement and ensure inflexible enforcement.

Corrective advertising is also very important and necessary to ensure that a series of advertisements correct the impression created by a false or misleading advertisement.

"Pre-clearance" is another way of avoiding false and misleading advertisements. This involves evaluating ads before they are published or broadcast by the self-regulating body.

Severe punishment and mandatory jail term for advertising magic cures must be provided.

Cine stars and celebrities should also be careful not to endorse such misleading advertisements of magic remedies & drug products. Legal provisions should also be in place to prosecute them.

As major ayurvedic companies, dubious claims promising magical remedies are being scanned. More numbers of Ayurvedic drug inspectors should be recruited in each state to check for Ayurvedic fake products.

Food and Drug Administration (FDA) should plan to pull the plug on television channels offering air time to promote medicines that guarantee healing of joint pain, impotence and weight loss, etc.

Consumer Protection 2018 Amendment Bill states that any manufacturer or service provider who causes a false or Misleading Advertisement to be made which is prejudicial to the interest of consumer shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to INR 1 Million, for the first offence; and for every subsequent offenders be punished with imprisonment for a term which may extend to five years and with fine which may extend to INR 5 million. It also provides for prosecution for celebrities endorsing products with misleading claims, including fines.

CONCLUSION

Even though there is comprehensive legal framework for the control of misleading, false, objectionable, and deceptive advertisements in India, the practices continues on a larger scale. ASCI guidelines are in existence from last 15 years, still there is lack of awareness among consumers as well as advertisers. ASCI and other Non-Governmental Organizations have to play the role of watch dog to curb misleading advertisements in the best possible way but due to lack of strict punishment and weaker legislative framework they are unable to reach their goal. ASCI & its Consumer Complaints Council (CCC) deal with Complaints received from Consumers and Industry against Advertisements which are considered as False, Misleading, Indecent, Illegal, leading to unsafe practices, or unfair to competition, and in contravention of the ASCI Code for Self-Regulation in Advertising. In furtherance to its objective of advertising with conscience, ASCI aim to ensure compliance to the protocols laid by it. There remains a vital requirement of the product is substantiated by the product efficacy data provided. The advertisements broadcasted to public should not be contradictory and misleading by ambiguity, implication and exaggeration. It is advisable that the producers of goods and

services do not come up with advertisements which claim or exaggerate to an extent which they cannot match up as the same would amount to misrepresentation to the customers in the market.

January 23, 2018 - The Government of India recently introduced a bill in the Indian Parliament to establish a Central Consumer Protection Authority ("CCPA") to regulate matters related to consumers' rights, including false and misleading advertising. Under the proposed bill, if CCPA determines that an advertisement is false or misleading, it may require that the advertisement be modified or discontinued and may impose penalties on both the manufacturer and any endorsers. The CCPA may also prohibit the endorser from acting as an endorser of any product or service for a period of up to three years.

"If passed, this new legislation will significantly increase the ability of the government to effectively address false advertising in India," said Sharad Vadehra, Partner of Kan & Krishme in New Delhi, India. "The penalties for endorsers who make misleading claims should also help ensure that celebrities think twice before endorsing products." The bill provides a defense for endorsers, however, if they have exercised "due diligence" to verify the truth of the claims that they are making. "This is an important reminder that, around the word, endorsers may be held liable for participating in false advertising," said Jeffrey A. Greenbaum, GALA Chairman & Partner of Frankfurt Kurnit in New York, NY.