

# Briefing Paper



## Advertising Challenges and Future Prospects

This briefing paper evaluates the significance of advertising, which is now becoming an integral part of our day-to-day life. It also cautions consumers against advertisements that are either false or tend to be misleading, harming their interests. This paper clarifies different forms of advertisements and the factors which influence a consumer's choice. It also aims at examining the effectiveness of self-regulation mechanism available to consumers and different legislations available to monitor, control and regulate advertisements. Overall, this paper would prove useful in raising awareness among readers regarding the basic concept of advertisements, its impact on consumers, the fundamental principles of self-regulations, legislations and regulations available.

### Introduction

*In this story, there are no heroes and villains; just people who believe that they can buy happiness and advertisers who support this belief. Consumerism is one of religion's modern replacements and like religion it actively encourages, then exploits, dissatisfaction with everyday reality.<sup>1</sup>*

Choice has become a major problem for all human beings. It is so because we are living in a kind of 'Riches Age'. There are new products, new kinds of entertainment and new services coming along constantly. Window-shopping, newspapers, magazines, radio, television, etc., influence us and increase our desires more and more. Choosing anything is difficult because, now-a-days, different brands of the same product or material are easily available in the market. In this situation, a question which arises is how do consumers decide what to buy? Sometimes, the price for a commodity is different at different places, and at times, one gets inferior quality product for higher prices. Lack of awareness on the part of consumer, especially the rural consumer, has complicated the process of product evaluation.

Consumers respond to advertisement and purchase goods. Generally, advertisements do not provide all the information that consumers need to know before buying a product. In recent years, behaviour of the rural consumer has changed. A few decades ago, a consumer was a silent person, who uncomplainingly purchased the goods from any place. But, this is not the case today. Now, the consumer is choice-empowered and decides the fate of the product

with his rising earnings. Thus, manufacturers are continuously engaged in understanding the complex consumer behaviour better and responding by offering goods and services as desired by the latter. However, during scarcity, the buyer is compelled to buy whatever is available in the market.

The key to ensuring consumer satisfaction lies in understanding the consumer, his likes and dislikes, expectations and motivations. In short, it may be called 'Consumer Behaviour' which essentially refers to how and why people make the purchase decisions they do.

### Two Factors Influencing Consumer Choice

#### **Purpose, Need and Desire**

A consumer will not buy a medicine unless someone is sick, but he may buy a cake if he is with his friends. He may not do so if he is alone. Events such as festivals, marriages, birthdays, transfers, etc., may occur, which give rise to needs for a specific period of time.

#### **Behavioural Pattern**

It is a familiar phenomenon to find people reacting to a situation or environment in different ways at different times. Behaviour and attitudes depend on a number of factors such as habit, recognition, price impulse, emotion and unpredictability. In general, consumer's behaviour is influenced by traditional culture, religion and society, of which the consumer is a part. In addition, environment also influences and purchasing power affects choices to a

large extent. Consumer behaviour is also guided by needs which are as yet not satisfied.

## Advertisements: An Integral Part of the System

*Advertising is a form of commercial mass communication designed to promote the sale of a product or service, or a message on behalf of an institution, organisation, or a candidate for political office.*

Advertisements can be looked at from various perspectives. Their purpose is to increase the number of articles or products sold. These are not only things we can buy in different stores, for example, clothing or supplies for daily life, but also simple things such as a message placed by an institution or organisation asking for attention of the public to raise money or make them aware of a problem, such as anti-smoking ads.

Advertisements are everywhere. Consumers have a need and advertisements direct the consumer to the company that has a solution for their need. For years, consumers have tried in vain to escape advertisements, but aggressive advertisement companies have stepped up their creativity. There are several reasons for advertising, some of which are as follows:

- ◆ increasing the sales of the product/service;
- ◆ maintaining a brand identity or brand image;
- ◆ communicating a change in the existing product line;
- ◆ introducing new products/services; and
- ◆ increasing the buzz-value of the brand/company.

Advertising became big business in the 20<sup>th</sup> century, offering many different jobs in advertising agencies and marketing. The use of media such as newspapers, television, direct mail, radio, magazines, outdoor signs and Internet made this growth possible. It is a form of transferring information to the consumer.

### Forms of Advertising

Advertisements can take a number of forms, including direct-mail, informational, institutional, outdoor, product, specialty, media, covert and celebrity etc.

### Impacts of Advertising

Advertising has positive as well as negative impacts on our society, in general, and the consumer, in particular.

#### Positive

Advertising is educational, as newer products are known and standard of living is improved. Advertisements do benefit consumerism in certain ways. For example, consumers are exposed to a variety of brands of a given product. It can be used to generate awareness among the public about which product is OK or to which they should say NO. In other words, advertising also acts as an educator, in the sense that it educates people what is good and bad for them and puts a curb on harmful products such as smoking and drinking, etc.

Advertising helps in communication and pays for most of our means of communication. The press and a large part of the entertainment industry, such as television, radio and magazines, are by and large supported by advertisements.

Advertisements provide useful information for rural consumers also, about products and their uses. They help them develop better habits and have a better life style. Advertising maintains high standards. Since a vast majority of products succeed in acquiring a reputation, which leads to public acceptance as a direct result of effective advertising, the sellers are forced to assume the responsibility of maintaining the original specification of the products they seek to sell.

#### Negative

There are various charges of advertising causing a negative social impact on the lives. The chief unfavourable charge against advertising is that it hails the public to buy things that they are not their real want. It is said that advertising plays with emotions and encourages people to think that buying and depleting are the activities of life.

The influence of advertisements on consumer choice is undeniable. And, it is this fact that makes it imperative that advertisements be fair and truthful. Misleading and false advertisements are not just unethical, they distort competition and, of course, influence consumer choice. False and misleading advertisements, in fact, violate several basic rights of consumers: the right to information, the right to choice, the right to be protected against unsafe goods and services as well as unfair trade practices (UTPs). Since advertisements are basically meant to promote a product or a service, one does see some exaggeration in the way they extol the virtues of the product. But, when it goes beyond that and deliberately utters a false claim or tries to misrepresent facts, thereby misleading the consumer, then it becomes objectionable.

#### *When Does an Advertisement Become 'Misleading'?*<sup>2</sup>

When an edible oil advertisement gives the impression that the consumer is free of heart problems as long as he/she is using that particular oil, then it is misrepresentation of facts. When an advertisement of a water purifier (which filters only bacteria and not viruses) claims that the purifier gives 100-percent safe water, then it is a false statement. When a mobile operator promises STD calls for 40 paise per minute, but omits to say that this rate is applicable only when calls are made to another user of the same company, then it constitutes misrepresentation.

When an advertiser or a manufacturer makes a claim about a product, he should be able to prove its accuracy. If he says that his refrigerator is the best or that it keeps the food germ-free, that claim should be backed by adequate scientific data. Similarly, if an advertisement for a detergent says that it can remove grease in just one wash – it should be able to do just that and the manufacturer should be able to prove this. Or else, it is an incorrect statement or a false advertisement.

### Box 1: Don't be a Sucker

“Sales only for today – Buy goods worth ₹150-200 in market for only ₹5-10.” Advertisements such as this flood newspapers every year during the festive season and mislead thousands of buyers into buying garments.

On August 01, 1984, the Monopolies & Restrictive Trade Practices (MRTP) Act brought under its purview unfair trade practices (UTPs) as well. The first sales promotion organiser nabbed under it was Bal Krishna Khurana, a known figure till then in all north Indian cities for selling ‘export quality’ hosiery goods at ridiculously low prices.

CUTS, at the time a new organisation, reacted accordingly when Khurana hit Jaipur in 1984 to sell his goods at throw away prices. CUTS had been receiving complaints from a large number of victims of these sales and decided to check these frauds. It moved the MRTP Commission against Khurana and demanded to know how he was offering ‘export quality’ hosiery goods worth ₹210 for a low as ₹5-15. CUTS stated that such misleading advertisements and bargain sales caused immense detriment and inconvenience to the public and buyers.

The MRTP Commission promptly ordered an inquiry into the complaint, which was followed, by an order restraining Khurana from organising any more sale promotion ventures. Subsequently, MRTP Commission advised newspaper not to carry such misleading advertisements as one of the duties of the media is to protect consumer rights and not solely earn revenue through bogus advertisements.

Source: *How to Survive as a Consumer*, Mehta Pradeep S, CUTS, 1998

If a retailer claims that he is offering a special discount on his goods as part of a festival celebration, while he is actually using the festival as an excuse to get rid of old and outdated goods, then he is deceiving consumers. Similarly, when a toothpaste advertisement says that it prevents cavities, one expects the manufacturer to have the data to prove this. If he fails to do that, then he is making an unsubstantiated claim or a false statement. If an advertisement for a face cream claims that it removes dark spots on the face and even prevents them from coming back, the manufacturer should be able to prove this. Or else, it is a deceptive advertisement.

Even putting crucial information about the product in minute letters at the bottom of the advertisement could be termed as an UTP, particularly if such information is not legible to the consumer. In fact, in a case<sup>3</sup>, the apex consumer forum warned against advertisements that use fine print to hide crucial information pertaining to products and services, thereby misleading the consumer.

#### *Two Categories of False and Misleading Advertisements*

Broadly, one can categorise false and misleading advertisements into two groups. In the first group would be advertisements that basically violate the consumers’ right to information and choice and thereby have the potential to cause to the consumer financial loss and even mental agony.

The second category would include advertisements that peddle health cures and drugs of questionable efficacy and health gadgets of unknown values. This class of advertisements is most dangerous, as they can have severe repercussions upon the health of the consumer.

Unfortunately, despite several laws meant to protect consumers against such UTPs, false and misleading advertisements continue to exploit the vulnerability of consumers, because of their poor enforcement and lacunae in some of the laws. In fact, such advertisements now have a wider canvas: while earlier, one could see them only in the print media, today they can be seen on television, influencing a larger number of people and impacting even the illiterate. Proliferation of advertisements through television marketing networks promoting health cures, slimming and beauty gadgets of unproven value is a cause of great concern, because today the reach of television channels is phenomenal. And, undoubtedly, the impact of visuals on the television screen is far greater than the newspapers.

### Self-Regulation by the Advertising Standards Council of India<sup>4</sup>

While, in some cases, falsehood or misrepresentation of facts is obvious, in most cases, one has to go behind the advertisement to find out whether it is telling the truth or not. And, this is where the problem lies. By the time an unethical advertisement is exposed, it would have already done the damage.

It is for this reason that the Advertising Standards Council of India (ASCI) is trying to inculcate self-regulation among its members so that such advertisements do not appear at all.

“Regulate yourself or someone else will” is its constant refrain. A voluntary body of all those involved in advertising, including advertisers, advertising agencies and the media, ASCI has drawn up a comprehensive advertising code for

self-regulation. The four fundamental principles of the self-regulation code are to:

1. ensure the truthfulness and honesty of representations and claims made by advertisements and safeguard against misleading advertisements;
2. ensure that advertisements are not offensive to generally accepted standards of public decency;
3. safeguard against the indiscriminate use of advertising for the promotion of products which are regarded as hazardous to society or to individuals to a degree or of a type which is unacceptable to society at large; and
4. ensure that advertisements observe fairness in competition so that the consumer needs to be informed on choices in the marketplace and the canons of generally accepted competitive behaviour in business are both served.

### Laws, Regulations and Codes That Deal with Advertisements Which Are Anti-consumer<sup>5</sup>

A number of laws, regulations and codes regulate advertisements and protect the interests of consumers.

#### **The Consumer Protection Act to the Rescue**

Section 2 (r) of the Consumer Protection Act gives a comprehensive definition of UTP and Section 14 deals with the directions that the court can give to deal with such practices.

The consumer forums have given some excellent orders in this area, but they cannot deal with misleading advertisements. For one, the consumer courts neither have the power nor the infrastructure to investigate *suo moto* into misleading advertisement nor take up such cases on their own, as was used to be done by erstwhile Monopolies and Restrictive Trade Practices (MRTP) Commission. Nor do they have an investigative wing like the office of the DG (Investigation and Registration) under MRTP Act. The consumer

forums can only adjudicate over complaints filed before them.

However, the consumer forums can issue interim orders prohibiting such advertisements, pending disposal of cases. They can give directions to the advertiser to discontinue such advertisements and award compensation for any loss or suffering caused on account of such UTPs. They can also award punitive damages and costs of litigation. But, most importantly, they can direct the advertiser to issue corrective advertisement.

Section 14 h (c) of the Consumer Protection Act (COPRA), 1986, describing the powers of the forum, says that the forum can order “corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement”.

As far as misleading advertisements are concerned, this is the most important provision and can really have a deterrent effect, if used effectively. Unfortunately, this provision has hardly, or perhaps never, been used.

#### **Cable Television Network Regulation Act**

The Cable Television Network Regulation Act mandates that all advertisements transmitted through the cable television network adhere to the Advertising Code formulated under it. Briefly, the code stipulates that all advertisements should conform to the laws of the country, the product advertised should not suffer from any defect or deficiency, as mentioned in the COPRA, 1986, and contain references which are likely to lead the public to infer that the product advertised has some miraculous property or quality, which is difficult of being proved.

#### **Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954**

The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, basically prohibits four kinds of advertisements pertaining to drugs and magical cures.

### Box 2: ASCI Pulls up Leading Cos for Misleading Ads

The ASCI said some television commercials by leading corporates have been withdrawn or modified as they did not abide by its code of conduct. While Reliance Communications, Parle Agro and Volkswagon were asked to withdraw their ads, Johnson & Johnson and Scorpio Enterprise, that makes ‘Natraj Atta’, were directed to modify their claims.

In two separate ads, Reliance Communications made unsubstantiated claims regarding unlimited talk time. The offers were however subject to certain conditions, which were not mentioned in the ads. Consequently the TV commercials had to be withdrawn.

The ad of LMN Juice by Parle Agro which was also discontinued, hinted at racism by portraying an African national in a bad light. In auto sector, Volkswagen also had to discontinue the commercial for its car-Polo as it portrayed violence against animals.

In case of J&J, the company was asked to modify the advertisement for sanitary napkins which compared its product to another pack that appeared like a rival’s product.

Source: *The Economic Times*, October 06, 2010

Section 3 of the Act says that no person shall take any part in the publication of any advertisement promoting a drug or leading to the use of a drug for:

- a) Procurement of miscarriage in women or prevention of conception in women;
- b) Maintenance or improvement of the capacity of human being for sexual pleasure; and
- c) Correction of menstrual disorders in women.

Section 3 of the Act further prohibits any advertisement promoting drugs for the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the schedule. The schedule lists a number of diseases, disorders or conditions such as diabetes, cataract, cancer, fevers (in general), obesity, rheumatism, impotence, high or low blood pressure, female diseases, epilepsy, stature of persons, venereal diseases, glaucoma, sterility in women, dropsy, etc.

Section 4 of the Act prohibits advertisements relating to a drug if the advertisement contains any matter which directly or indirectly gives a false impression regarding the true character of the drug or makes a false claim for the drug or is otherwise false or misleading.

Section 5 of the Act prohibits advertisements of magic remedies for treatment of certain diseases and disorders. Violation of the law attracts imprisonment for six months or fine or both, for first conviction and for subsequent conviction, imprisonment for a year or fine or both.

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

This law is also against misleading advertisements. It prohibits advertisements and promotion of infant milk substitutes, feeding bottles and infant foods, because their promotion creates a misconception and thereby misleads consumers into believing that infant foods or milk substitutes sold in the market are as good as, or better than, mother's milk.

Section 3 of this Act says that no person shall: (a) advertise or take part in the publication of any advertisement for the distribution, sale or supply of infant milk substitutes or feeding bottles or infant foods; and (b) give an impression or create a belief in any manner that feeding of infant milk substitutes and infant foods is equivalent to, or better than, mother's milk.

### **Misleading Advertisements and Regulators**

In addition to these laws, the regulatory agencies established under different laws have also formulated rules, regulations and advertisement codes to ensure that advertisers do not mislead consumers through their publicity material, including advertisements:

#### ***Telecom Regulatory Authority of India***

Telecom Regulatory Authority of India (TRAI) regulates and monitors telephone operators regarding information on tariff through advertisements in the manner prescribed by the Authority. The authority has also issued directions to the operators to discontinue or modify advertisements found to be misleading or false and not in the interest of the consumer.

#### ***Insurance Regulatory Development Authority***

The Insurance Regulatory and Development Authority's (IRDA) regulation on advertisements lay down strict guidelines not only on the content of the advertisements issued by insurers and their intermediaries but also on their compliance.

#### ***Securities and Exchange Board of India***

The (Disclosure and Investor: Protection) guidelines, 2000,<sup>6</sup> of the Securities and Exchange Board of India (SEBI) provide specific guidelines on advertisements to the investors. In addition, the SEBI has also drawn up exclusive advertising code for Mutual Funds.<sup>7</sup>

#### ***The Reserve Bank of India***

As a regulator and supervisor of the financial system, the Reserve Bank of India too exercises its power to curb false and misleading advertisements by various financial institutions.

#### ***Medical Council of India***

The Code of Ethics Regulations 2002,<sup>8</sup> formulated under the Indian Medical Council Act, deals with advertisements.

Besides above, there are also certain restrictions on advertisements under various consumer protection laws.

The Prevention of Food Adulteration Act,<sup>9</sup> for example, regulates food advertisements. Similarly, the Fruit Products (amendment) order<sup>10</sup> says that "Sweetened aerated water containing no fruit juice or fruit pulp or containing less than 10 percent of fruit juice or fruit pulp shall have a clear and conspicuous marking on the body of the container to the effect 'contains no fruit'. The Drugs and Cosmetics Act<sup>11</sup> refers to "diseases, which a drug may not purport to prevent or cure".

### **Conclusion and Recommendations**

Both print and the electronic mediums play a pivotal role in promoting different advertisements stems. The policy behind the existing advertising laws should be to protect consumers' rights and interests besides promoting the healthy development of the advertising industry, and to maintain social and economic order in the market economy.

Many of the mechanisms such as self regulations, regulations on behalf of government and legislations

to control and monitor advertisements are already in place to ensure that ads convey accurate and complete information to consumers but implementation and compliance should also take place and until and unless these do not happen, consumers continue to suffer due to misleading ads, which is now becoming a big industry in itself. Misleading or false advertisements are covered UTP and aggrieved consumers can approach consumer forums to get the redressal but the point is not just getting a relief or redressal to consumers but some harsh and stringent actions needs to be taken against the violators in order to control or curb the menace forever.

Besides, any abuse as a result of UTP can be compensated in the form of damages under COPRA but consumer fora

do not deal with the issues beyond this such as investigating and analysing the suspected ads and secondly, this is also a fact that Competition Act does not entertain UTPs. So, the hope rested on the proposed National Consumer Protection Authority, which was the way out to deal the issues, but now the Government of India do not seems to be taking much interest in the formation of this new agency.

It is therefore recommended that COPRA should be amended in order to entrust and empower only the National Consumer Disputes Redressal Commission to tackle the issues in a similar manner as done by the MRTP Commission during its existence. This would fill up a vital gap in our consumer protection system.

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10. Section 11(1)(i), 13, 11(2), read with clauses 7 and 9 of TRAI Act, 1997
11. The IRDA (Insurance Advertisement and Disclosure) Regulations, 2000
12. Section 45J, 45K, 45L and 45MA of Chapter IIIB of RBI Act, 1934

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## ENDNOTES

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- 3 M R Ramesh vs M/S Prakash Moped House and others, (RP No 831 of 2001)
- 4 CERC, Ahmedabad in Indian Code of Advertising Practices and proposed Law for Advertisements Standards Regulatory Commission
- 5 Supra Note 2
- 6 Chapter IX of the (Disclosure and Investor: Protection) Guidelines, 2000
- 7 Schedule VI under the SEBI (MF) Regulations 1996
- 8 Chapter 6 of the Code of Ethics Regulations 2002
- 9 Section 43 A of The Prevention of Food Adulteration Act, 37 of 1954
- 10 Clause 11 m sub-clause 3 of the Fruit Products (amendment) Order
- 11 Rule 106 of the Drugs and Cosmetics Act

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